

(*Excise.—Chapter X.—Miscellaneous.—*
Clauses 101—105.)

(2) The Board may revise any order made by the Commissioner or the Collector, and the Commissioner may revise any order made by the Collector, under this Act, whether or not an appeal has been made from such order under section 99.

Additional power to make rules.
[Cf. Act XII, 1896, s. 65 (e), (f), (g).]

101. The Board may make rules—

- (a) as to the disposal of things confiscated under this Act; [Act, s. 76; Cf. Act I, 1878, s. 18.]
- (b) as to the payment, out of the proceeds of confiscations under this Act, out of fines imposed under this Act, and out of moneys received under section 94, of—
 - (i) rewards to officers and informers, and
 - (ii) compensation to persons subjected to annoyance or injury by any proceedings under this Act or rules made hereunder;
- (c) as to the duties of Excise-officers, and [Act XII, 1896, s. 65 (f).]
- (d) generally, to provide for carrying out the provisions of this Act. [Act XII, 1896, s. 65 (g).]

Power to exempt exciseable articles from provisions of Act.

[Cf. Act XII, 1896, s. 66.]

102. The Board, with the sanction of the Local Government, may, by notification in the Calcutta Gazette, either wholly or partially, exempt any exciseable article from all or any of the provisions of this Act, either throughout Bengal, or in any specified area, or for any specified period or occasion or as regards any specified class of persons. [Act, ss. 14, 2.]

Powers of Board exerciseable from time to time.

103. Any power conferred by this Act on the Board may be exercised from time to time as occasion requires. [Act, *passim*; Cf. Bengal General Clauses Act, 1890, s. 15.]

Saving of certain Acts.
[Cf. Act XII, 1896, s. 4.]

104. (1) Nothing contained in this Act shall affect the provisions of— [Act, s. 85.]

- XVI of 1863. (a) the *Excise (Spirits) Act, 1863*, or [New.]
- Ben. II of 1866. (b) the *Calcutta Suburban Police Act, 1866*, or
- Ben. IV of 1866. (c) the *Calcutta Police Act, 1866*, or
- XIII of 1889. (d) the *Cantonments Act, 1889*, or
- (e) any Act of the Governor General of India in Council regulating the levy of customs duties on articles imported or exported by sea or by land. [New.]

Ben. Act II of 1866.

Ben. IV of 1866.

(2) All references to Act XXI of 1856 in the said *Calcutta Suburban Police Act, 1866*, and all references to Act XI of 1849 in the said *Calcutta Police Act, 1866*, shall be construed as referring to this Act. [New.]

Repeal of enactments.

105. The enactments specified in the first column of the Schedule are hereby repealed, to the extent mentioned in the third column thereof. [Act, s. 3.]

(Excise.—Schedule.)

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 105.)

Number and year.	Short title or subject.	Extent of repeal.
1	2	3

Part I.—Acts of the Governor General of India in Council.

IX of 1885	... The Excise and Sea Customs Law Amendment Act, 1885.	In the title, the words and figures "the Bengal Excise Act, 1878, and." In the preamble, the words and figures "section 18 of the Bengal Excise Act, 1878, and."
XIII of 1890	... The Excise (Malt Liquors) Act, 1890.	Sections 6, 7 and 8, and the heading prefixed thereto.
V of 1897	... The Amending Act, 1897.	So much of the second Schedule as relates to Bengal Act I of 1883 (Excise).

Part II.—Bengal Acts.

VII of 1878	... The Bengal Excise and Licensing Act, 1878.	So much as has not been repealed.
IV of 1881	... The Bengal Excise Act Amendment Act, 1881.	Ditto.
I of 1883	... The Bengal Excise (Amendment) Act, 1883.	Ditto.
II of 1903	... The Bengal Excise and Licensing (Amendment) Act, 1903.	The whole.

ANNEXURES TO THE BENGAL EXCISE BILL, 1903.

I.—TABLE SHOWING WHERE THE SECTIONS OF THE BENGAL EXCISE AND LICENSING ACT, 1878 (THE NEW EDITION OF THE ACT, "AS MODIFIED UP TO THE 1ST MAY, 1901"), ARE RESPECTIVELY REPRODUCED IN THE BILL.

1	2	3
Sections of Act.	Clauses of Bill.	REMARKS.
1 ...	1 (1)	
2, first paragraph ...	1 (2)	
„ second „ ...	.....	Repealed by the Repealing and Amending Act, 1897 (V of 1897).
3, first „ ...	105	
„ second „ ...	.....	Covered by the Bengal General Clauses Act, 1899, section 8 (a), (b), (c).
„ third „ ...	.....	Covered by the Bengal General Clauses Act, 1899, sections 8 (c) and 25.
„ fourth „ ...	.....	Covered by the Bengal General Clauses Act, 1899, section 10.
„ fifth „ ...	.....	Covered by the Bengal General Clauses Act, 1899, section 8.
4, "Board" ...	2 (1) (a)	
„ "Collector" ...	2 (1) (d)	
„ "Commissioner" ...	.....	Covered by the Bengal General Clauses Act, 1899, section 3, clause (10).
„ "exciseable article" ...	2 (1) (g)	
„ "foreign exciseable article" ...	20	
„ "fermented liquor" ...	2 (1) (i)	
„ "intoxicating drug" ...	2 (1) (k)	
„ "Local Government" ...	.....	Covered by the Bengal General Clauses Act, 1899, section 3, clause (24).
„ "section" ...	.....	Covered by the Bengal General Clauses Act, 1899, section 3, clause (39).
„ "spirituous liquor" ...	.....	A new definition of "spirit" is inserted in section 2 (g) of the Bill.
„ "licensed vendor or manufacturer" ...	2 (1) (l)	
„ "tari" ...	2 (1) (s)	

1	2	3
Sections of Act.	Clauses of Bill.	REMARKS.
4, "the town of Calcutta" ...	} 2 (1) (c)	
" concluding paragraph ...		
5, 6, 7 ...	4	
8 ...	12 (a), (b), (j)	
9, first paragraph ...	4	
" second " ...	5	
10 ...	12 (c), (f)	
10A ...	3	
11 ...	13 (1)	
12, first paragraph ...	42 (b)	
" second " ...	35	
" third " ...	14	
13 ...	34, 42 (b)	
14 ...	102	
15, first paragraph ...	2 (3)	
" second " ...	17 (1)	
" third " ...	.....	} Omitted. See the new provisions in clauses 17 (a) and 22 (d) of the Bill.
" fourth " ...	.....
" fifth " ...	2 (3)	
16 ...	15	
17 ...	19 (1)	
17A, first paragraph ...	20	The words "or other officer duly authorised in that behalf," in clause (2) of section 17A of the Act, are omitted.
" second " ...	42 (b)	
18, first " ...	10 (1)	
" second " ...	.....	Omitted. Will be provided for in rules to be made under the Bill when passed.
19 ...	23 (1)	
19A ...	24 (1)	
20 ...	29 (a)	
21, first paragraph ...	32	
" second " ...	29 (2)	

1	2	3
Sections of Act.	Clauses of Bill.	REMARKS.
22, first paragraph ...	30	
„ second „ ...	.....	Omitted, as being covered by clauses 13 and 68 (1) of the Bill.
23, first „ ...	.....	Omitted, as clause 30 of the Bill empowers the Collector, not the farmer, to grant licenses.
„ second „ ...	29 (b)	
24, first „ ...	29 (c), (d)	
„ second „ ...	29 (3)	
25 ...	31	
26 ...	33	
27 ...	36	
28 ...	42 (a)	
29, first paragraph ...	39	
„ second „ ...	40 (1), (2)	
„ third „ ...	40 (3)	
30 ...	41	
31 ...	43, 100	
32 ...	44	
33 ...	2 (e), 45	
34 ...	2 (f), 46	
35, first paragraph ...	22 (b), (c), 28	
„ second „ ...	12 (g)	
36 ...	47	
37 ...	2 (o), 48	
38 ...	50	
39 ...	49	
40 ...	2 (o), 51, 53	
41, first paragraph ...	62 (2)	
„ second „ ...	2 (f)	
42, first „ ...	63 (1)	
„ proviso ...	{ 57 (2), proviso 63 (1), proviso	
43 ...	52, 53, 62 (1) ...	The words “between sunset and sunrise” in section 43 of the Act are omitted from section 52 of the Bill, to which section are added the words “and places to which it is extended by the Local Government by notification in the Calcutta Gazette.”

1	2	3
Sections of Act.	Clauses of Bill.	REMARKS.
44	55	
45, first paragraph	.....	Omitted, as being covered by clauses 2 (f), (r), 44 and 63 (a) of the Bill.
„ second „	63 (2)	
46	56	
47	2 (o), 57	
48	58	
49	.....	Omitted, as being covered by the Code of Criminal Procedure, 1898, section 204.
50	93	
51	53, proviso; 57 (2)	
52	61	
53, first paragraph	66 (2), 68 (1)	
„ second „	2 (s), 13 (b), 13 (c)	
„ concluding clause	13 (a)	
54	49, 66 (2), 89, 91 (a)	
55	66 (1), 91	
56	78	
57	67 (3), 89	
58	67 (1), 89	
59	78, 79	
60, first paragraph	68 (2)	
„ second „	17	
61	19, 73 (1)	
61A	73 (1)	
62	19 (2)	
63	15, 68 (1), 73 (1)	
64	.....	Repealed by the Bengal Excise Act Amendment Act, 1881 (Ben. Act IV of 1881).
65	80 (1)	
66	72	The words “between sunset and sunrise” and the words “in addition to any other penalty to which he may be liable under this or any other Act” in section 66 of the Act, are omitted from the Bill, and the words “and places to which it is extended by the Local Government by notification in the Calcutta Gazette,” have been added.

1			2	3
Sections of Act.			Clauses of Bill.	REMARKS.
67	...	...	71	
68	...	...	84	
69	...	...	2 (o), 81	
70	...	...	80 (2)	
71	...	...	82	
72	...	...	90, 92 ...	... The reference to fines in the first line of section 72 of the Act is omitted, as being unnecessary, in view of section 5 (2) of the Code of Criminal Procedure, 1898.
73	...	...	87	
74, first paragraph	...	...	88	
„ second „	...	...	66, etc.	... Covered by clause (22) of section 3 of the Bengal General Clauses Act, 1899, but repeated in clause 66 and other clauses of Chapter VIII of the Bill in order to prevent the provision being overlooked.
75	...	...	50, 91, 95	
76	...	...	101 (a)	
77	...	...	95, 101 (o)	
78	...	...	101 (b)	
79	...	...	101 (b)	
80	...	...	96	... The words "either by the Collector or by a farmer," in section 80 of the Act, have been omitted, because under clause 30 of the Bill licenses are to be granted by the Collector, not by the farmer.
81	...	...	97	
82	...	...	102	... The clause in section 82 of the Act as to cancellation of Notifications is omitted from the Bill, being covered by sections 15 and 22 of the Bengal General Clauses Act, 1899.
83	...	...	99	
84	...	...	98	... The clause in section 84 of the Act as to withdrawal of functions and powers is omitted, as being covered by section 22 of the Bengal General Clauses Act, 1899.
85	...	...	104	...

II.—TABLE SHOWING WHERE THE SECTIONS OF THE BENGAL EXCISE AND LICENSING (AMENDMENT) ACT, 1903, ARE RESPECTIVELY REPRODUCED IN THE BILL.

1	2	3
Sections of Act.	Clauses of Bill.	REMARKS.
1	.....
2	Title	
3	Preamble	
4	.....
5	13 (1)	
6	37	
7	38	
8	42	
9	71	

III.—STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to consolidate and amend the Bengal Excise law, which is now contained in the Bengal Excise Act, VII of 1878, as amended on different occasions by five Acts, viz., Act IX of 1885, Act XIII of 1890, Bengal Act IV of 1881, Bengal Act I of 1883, and Bengal Act II of 1903. The time has arrived when it is clearly necessary to repeal and re-enact the present law. The Bill is mainly a consolidating measure, and accordingly re-enacts large portions of Bengal Act VII of 1878 as amended from time to time. There are many matters in respect of which that Act is defective or obscure, and new provisions have been introduced into the Bill for dealing with them. All material changes in the existing law which are proposed in the Bill are mentioned in the following notes.

Notes on Clauses.

1. *Chapter I.—Preliminary.—Clauses 2 (b), 16 and 69.*—These clauses have reference to a proposal put forward by the Calcutta Wine, Spirit, and Beer Association that the bottling of wines and spirits for sale should be prohibited, except under license. The object of the restriction is to prevent German patent spirits, sophisticated to resemble whisky or brandy, from being sold as the genuine article. Clause 2 (b) defines bottling, clause 16 prohibits bottling for sale without a license, and clause 69 imposes a penalty for breach of clause 16.

2. *Clause 2 (c).*—As the jurisdiction of the Superintendent of Excise Revenue, Calcutta, comprises Calcutta, the Suburbs, and the towns of Howrah and Bally, the "Calcutta district" has been defined so as to include the whole of this area, but power has been reserved to the Government to reduce the area according to requirements.

3. *Clause 2 (f)* defines the term "Excise Officer," there being no exhaustive definition of the term in the present law. The legal authority of an Excise Deputy Collector was lately called in question in a certain case, and the definition is inserted in order to place the powers of such officials beyond dispute.

4. *Clause 2 (h).*—This provision is modelled on section 3 (16) of the Madras Abkari Act, 1886. Clauses 25 and 26 of the Bill, with reference to which clause 2 (h) has been inserted, confer on the Board of Revenue, subject to the sanction of the Local Government, full power to regulate the export of excisable articles. The necessity of such provisions was brought to notice in connection with the export of ganja to London without prepayment of duty.

5. *Clause 2 (k).*—This definition follows section 3 (15) of the Madras Abkari Act. It is inserted with reference to clause 23 of the Bill, which will enable the Board to realize on any excisable article imported from a province in British India such duty as the Local Government has fixed in respect of a like article when manufactured in Bengal, or if no like article is manufactured in Bengal, then such duty as the Local Government may fix in this behalf.

6. *Clause 2 (l).*—The opportunity has been taken to introduce a more precise and comprehensive definition of intoxicating drugs.

7. *Clause 2 (n).*—The term "manufacture" is not defined in the present Act; consequently the word has been held to apply to the complete process only, and not to a part of the process. Admixing and rectifying for purposes of sale have been included in this definition, which should be read with clause 2 (g). The addition of the words "for purposes of sale" has been made with the object of excluding such harmless operations as colouring, flavouring or blending when carried out by the consumer.

8. *Clause 2 (o).*—The definition of "pachwai" supplies an omission in the present Act.

9. *Clause 2 (r).*—The present Act contains no definition of "spirit," but defines "spirituous liquor." That definition is obviously imperfect, and has led to two inconvenient rulings by Courts of law. In one case the accused was charged with illegal manufacture of liquor, his act being the addition of a fermented wash to white spirit. The Court held that "spirituous liquor" did not include liquor manufactured by a process of fermentation, and that the addition of a fermented wash to spirit did not constitute the manufacture of spirituous liquor. In the other case, the accused was charged with manufacturing *Sanjibani Sura*, a medicinal preparation containing a large quantity of spirituous liquor, without a license, but the Court held that "spirituous liquor" did not include a medical preparation, and the accused was acquitted. Such a state of the law would exempt all spirit if slightly medicated, and would open a vast field for defrauding the revenue. Hence spirit has been defined as in the Bill, the definition of "spirituous liquor" has been omitted, and a new sub-clause (2) has been added to clause 2, to empower the Local Government to declare what shall be deemed to be "country spirit" and "foreign liquor," respectively.

10. *Clause 2 (3).*—Section 15 of the Act fixes a maximum for the retail sale of each article, and difficulty has been felt when the circumstances of excise in certain districts seem to require a lower limit. Accordingly power is now reserved to the Board to fix the limits of retail and wholesale sale, respectively, either for the whole Province or for any specified local area.

11. *Chapter II.—Manufacture and Storage.*—As manufacture includes production [see clause 2(n)] all references to “production” have been omitted, the only exception being in clauses, such as 3 (c), referring to the production of intoxicating drugs.

All clauses relating to the cultivation of plants from which an intoxicating drug can be produced have been altered so as to refer to the collection, as well as the cultivation, of plants.

12. *Clause 3 (c).*—This clause is mainly aimed at the unlicensed collection of bhang. Most of the bhang which is used is collected from the wild plant, and the Collector has at present no legal control over the process of collection. The clause accordingly prohibits the collection or cultivation of plants without a license, and clause 66 (i) imposes an adequate penalty for breach of this prohibition.

13. *Clause 3 (e).*—The object of this clause is to have all stills licensed. The provision is justified by the fact that manufacturers of rose-water, kewara, etc., have been detected in using their stills to make spirituous liquors. The clause is qualified by the proviso to clause 42 (c), which declares that no fee shall be prescribed for a license for a still not actually used for the manufacture of spirit.

14. *Clause 4.*—Under the present Act it is only the Collector who can establish a distillery, and fix limits within which no liquor except that manufactured at such a distillery shall be introduced without a pass. It may be convenient that spirit from a single distillery should be supplied to several districts, and it is to meet such a case that this clause enables the Excise Commissioner as well as the Collector to fix the limits referred to. The clause also provides for the establishing or licensing of depôts where liquor manufactured at central distilleries may be stored for issue.

15. *Clauses 6, 7, 8 and 9.*—It is proposed to take power in the Bill for the establishment and regulation of warehouses for the storage of hemp drugs. The Government of India acknowledge that neither ganja nor bhang are likely to be imported under bond (nor charas either, for which special executive arrangements have been made), but they are nevertheless of opinion that the establishment or licensing of warehouses for these drugs in Bengal might hereafter be found necessary with reference to the system of control over the traffic in hemp drugs which is laid down in the Excise Act, 1896. These new clauses are also required in order to give full effect to the provisions of clause 10 of the Bill.

16. *Clause 10.*—This clause, which relates to the imposition of duties, will legalize the issue of spirits or drugs free of duty for Government purposes, and the levy of duty at varying rates to be fixed by Government on different classes of articles, or on the same article when consumed in different places. *Explanation 2* meets the case of a central distillery which supplies spirits to districts in which different rates of duty are in force.

17. *Clause 11* has been introduced to legalize the existing practice under which ganja and sidhi declared unfit for use are destroyed by order of the Collector.

18. *Clause 12* amplifies the rule-making powers of the Board of Revenue, in order to cover new matter introduced into the Bill.

19. *Clause 12 (i).*—This is taken from the Madras Act. Allegations have frequently been made regarding the use of deleterious substances in the process of manufacture. It may prove desirable to have power to prohibit the use of such substances or the use of particular flavouring or colouring matters in blending spirits for the market.

20. *Chapter III.—Sale and Possession.*—*Clauses 18 and 19.*—These clauses extend the present law by prohibiting absolutely the possession of even the smallest quantity of any exciseable article that has been illicitly obtained. Clause 19 (2) also puts country rum on the same footing as imported spirit in respect of transport and possession. Again, the limit of private possession is a serious obstacle to the smuggler, and it has consequently been fixed at a figure not higher than the limit of retail sale.

21. *Clause 20.*—The High Court decided in the case of Jagannath Mandhata and others v. the Queen-Emress (1897, I.L.R., 24 Calc., 324, that an Excise officer has under the present law no authority to enter and search a house in which a “foreign exciseable article” may be suspected to have been concealed. In order to meet this defect, clause 20 has been drawn so as to refer to exciseable articles generally. The definition of foreign exciseable article in the Act has been omitted from the Bill, and clause 73 (a) has also been revised.

22. *Clause 21* is based on section 58 of the Madras Excise Act, and has been inserted to meet the case of possession without payment of duty. The opportunity has been taken to extend the clause, as in the Madras Act, to the unlawful possession of exciseable articles which have been imported, manufactured or transported in contravention of any provision of the law.

23. *Clause 22* is wholly new, except that clauses (b) and (c) incorporate the provisions of section 35 of the present Act. As regards clause (f), it may be mentioned that although the system of maximum and minimum prices has been abolished under the orders of Government, yet it would be desirable to retain in the Act the power to fix such prices.

24. *Chapter IV.—Import, Export and Transport.*—*Clause 23.*—Reference has already been made to this clause in connection with clause 2 (k). It is only necessary to add that clause 23 (2) declares that the provisions of clause 23 (1) shall not apply to any article which is subject, upon importation, to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878.

25. *Clause 27.*—On the analogy of section 12 (c) of the Excise Act, 1896, a general power is taken to prohibit the import and export of exciseable articles, as is done in regard to transport in clause 28 of the Bill. Although the powers in

question may not be required in Bengal in present circumstances, it is possible that they may be found necessary hereafter.

26. *Clause 28*.—This clause has been inserted to meet administrative difficulties already felt in connection with the transport of country spirits.

27. *Chapter V.—Farm of Fees*.—This chapter deals with the farm of fees. It reproduces the present law, with minor amendments. Although the farming system is not at present in force in Bengal, the chapter is retained in case it should hereafter be found convenient to farm out a particular branch of the excise revenue.

28. *Chapter VI.—Provisions as to Licenses and Permits*.—*Clause 38* is a reproduction of section 7 of Bengal Act II of 1903, except that the clause is amplified so as to make it applicable to children as well to women.

29. *Clause 39*.—This clause is important. Sub-clause (c) has been amplified so as to render a license or permit liable to be summarily cancelled for any offence against the Excise Act, or the Indian Merchandise Marks Act, or any section introduced into the Indian Penal Code by section 3 of the latter Act. The reason for this amendment is as follows. A licensee who held two licenses for the retail sale of country spirits, also held a subsidiary license for the sale of imported liquors. He was convicted of an offence in connection with the sale of imported liquor, and his license for such sale for the shop in which the offence was committed was cancelled. But, on the question of cancelling the other two licenses, it was held that under section 29 of the present Excise Act a license could be cancelled only for the violation of one of the conditions on which it was itself granted, and not for the violation of a condition of any other license, although the two licenses might be held by the same person. To remedy this defect sub-clause (2) has been added in order to make a conviction under any of the laws mentioned in clauses (c) and (d) a ground for cancelling all excise licenses held by the offender. As regards clause (d), it may be explained that, by section 10 (1) of the Indian Merchandise Marks Act, certain additions are made to the list of prohibited goods in section 18 of the Sea Customs Act, the effect of which is to prohibit the importation of goods bearing a false trade mark or a false trade description, and that under section 167 (8) of the Sea Customs Act any person who imports or attempts to import any such goods is liable to a fine and to confiscation of the goods at the hands of the Collector of Customs. Action is constantly taken in the Custom House under the last-named section, but several cases have occurred which differ from that of the licensee above referred to in that the fraud was discovered in the Custom House before the goods were offered for sale to the public (and there was therefore no conviction under the Indian Merchandise Marks Act). Accordingly, sub-clause (d) is so framed as to authorise the cancellation of a license in cases of this class.

30. *Clause 41*.—The expression "sum payable under the license" occurring in section 30 of the present Excise Act is in practice construed as meaning the sum payable under the license for the period up to date of surrender, and not the sum payable under the license for the whole year. This has the effect of enabling defaulting licensed vendors to evade their due liabilities by merely surrendering their license. The amendment now proposed will require a licensee in such cases to pay in the license fee for the whole period of the currency of the license. The principle is a sound one, tempered as it is by the proviso in the Bill which permits the Commissioner to remit to the vendor any sum payable by him.

31. *Chapter VII.—Officers and their powers*.—*Clause 44*.—Section 32 of the present Act imposes unnecessary limitations in regard to the appointment of a Superintendent of Excise Revenue. Clause 44 of the Bill therefore allows the appointment of a special officer to exercise all or any of the powers and to perform all or any of the duties of the Collector either concurrently with, or to the exclusion of, the Collector, and the withdrawal from the Collector of all or any of his powers in respect of the excise revenue, when such an appointment has been made.

32. *Clause 46*, which takes the place of section 34 of the Act, is a necessary consequence of the reorganization of the Excise Department on a provincial basis.

33. *Clause 48*.—The present law (section 37 of the Act) has been so amended as to give Excise Officers not below the rank of Sub-Inspectors power to enter and inspect shops. The power of arrest and seizure is often of no avail, unless the power of inspection is given as well.

34. *Clause 49* gives any Excise Officer on a monthly salary of not less than Rs. 10 the power to arrest without a warrant and the power to seize unlicensed stills, etc.

35. *Clause 50*.—The only amendment of any importance is that while the present law authorizes an Excise Officer to stop and detain persons carrying illicit liquor or apparatus when authorized by a warrant from the Collector, clause 50 of the Bill confers this power on the officer without special authorization, but with the restriction that he may only act in a public place.

36. *Clause 51*.—Under section 40 of the Excise Act an Excise Officer, on receiving information of a breach of the excise law, can only search in the presence of an officer of police not being lower in grade than a corporal or head-constable. As police officers are not everywhere immediately available, many cases escape detection, and it is proposed to amend the law so as to dispense with the attendance of the police.

37. *Clause 52*.—The power of entering chemists' shops, where drinking goes on, should not be restricted to the night, as in section 43 of the present Act. The practice at which the section is aimed is an insidious one, and offers special temptations. The words "between sunset and sunrise" have therefore been omitted. The section has further been

amended so as to authorize its application to any places, other than the town and suburbs of Calcutta and Howrah, to which it may hereafter be extended by the Local Government.

38. *Clause 54* is new. It is based on the Madras Abkari Act. The intention of the clause is obvious.

39. *Clause 55*.—The words “unless bail be accepted under section 64” have been added, since section 64 (1) gives an absolute direction that offenders, if prepared to give bail, are to be released on bail; the words “for trial or adjudication” have been inserted, and the words occurring in the Act (section 44) “or, if the arrest, seizure or search has been made in the town of Calcutta to a Presidency Magistrate” have been struck out as being superfluous, since jurisdiction in Calcutta is exercised by Presidency Magistrates only.

40. *Clause 56* is based upon section 46 of the present Act. The words “either from information in writing or from the proceedings in any other case” are omitted in order to make the power conferred upon the Collector more comprehensive; and an addition is made to cover the illicit cultivation or collection of *bhang*.

41. *Clauses 59 and 60* are based on section 38 of the Madras Abkari Act. They provide for reports of breaches of the Act, and require every person employed by Government to take all reasonable measures in his power to prevent the commission of any such breaches.

42. *Clause 61*.—This clause, which is based on section 39 of the Bombay Abkari Act, 1878, provides that, besides police officers, village chaukidars and officers of the Customs and other departments shall be bound to assist Excise Officers. It was noticed that the stoppage in 1892 of the practice of arrest by chaukidars, and the restriction of the power of arrest to officers not below the rank of a head-constable, had encouraged smuggling across the Nepal Frontier. It is true that village chaukidars cannot very well be vested with general powers of arrest, but in practice this clause will enable them to take action against smugglers.

43. *Clause 63*.—This clause is based upon sections 42 and 45 of the present Act, which have been altered so as to be brought into harmony with the new definition of the “Calcutta district,” contained in clause 2 (c) of the Bill.

44. *Clause 64* is new. It provides for bail being accepted. The principle of the clause is sound, and the system is found to have worked well in Madras.

45. *Clause 65* is borrowed from the Madras and Bombay Abkari Acts, and gives legal authority to what has always been the practice in Bengal.

46. *Chapter VIII.—Penalties and Procedure*.—Under the existing law all first offences are punishable with fine only; and imprisonment, either simple or rigorous, can only be awarded as an additional penalty where a previous conviction is proved. Where the offenders belong, as they mostly do, to the lower classes, experience has shown that simple imprisonment fails to induce them to pay their fines. Where, again, people of the upper classes take to conducting illicit distillation on a large scale, the business proves so lucrative that a fine produces no effect. Additions have accordingly been made in the Bill to give power, in many cases, to sentence an offender to imprisonment of either description in lieu of, or in addition to, fine. Amendments have also been made to bring this Chapter into harmony with the preceding Chapters of the Bill.

47. *Clause 66*.—This clause incorporates parts of sections 53 to 55 of the present Act. The present law does not provide any punishment for the possession of an unlicensed still, although section 10A prohibits such possession and section 39 empowers an Excise Officer to arrest the possessor. Sub-clause (c) of clause 66 of the Bill supplies the omission.

48. *Clause 68*.—The words “and any licensed retail vendor who sells any exciseable article by retail in any manner which is not covered by his license” have been inserted in sub-clause (2) as a necessary amendment for Calcutta. This amendment will make the offence punishable with a fine of Rs. 200, whereas under section 59 of the present Act the fine is limited to Rs. 50, which, being often less and never more than a month's fee, is insufficient, and only acts as an inducement to vendors to run the risk of detection.

49. *Clause 70*.—Is taken from the Bombay and Madras Abkari Acts, and is aimed mainly at the trade in spurious liquors.

50. *Clause 73*.—This clause, read with clauses 18, 19 and 21, will render it possible to punish persons who have in their possession exciseable articles which have not paid duty, or have been illicitly obtained, even if the quantity of such articles does not exceed the limit of private possession.

Sub-clause 1 (b) meets the common case of licensed vendors of distillery liquor selling outstill liquor. Such liquor is necessarily in excess of the quantity shown in their accounts as received from the distillery; but under the present law they can only be prosecuted for a breach of the conditions of their licenses (section 59) and fined Rs. 50.

51. *Clause 74*.—This clause is new. It extends to exciseable articles the rule laid down in section 27 of the Indian Penal Code as to property in the possession of a wife, clerk or servant being deemed to be in the possession of the husband or master.

52. *Clause 75* is the natural sequence of the provisions in clauses 25, 26, 27 and 28 regarding the import, export and transport of exciseable articles. It is here proposed to be enacted that any person committing an act in contravention of these sections shall be liable to punishment.

53. *Clauses 76 and 77*.—The present law prescribes no penalty for breach of the provisions of Bengal Act II of 1903 (sections 6 and 7), which now appear as sections 37 and 38 of the Bill, in regard to the unlawful transfer of a license and the unlawful employment of women or children by licensed vendors. It is accordingly proposed to take power to punish such breaches by fine up to a limit of Rs. 500.

54. *Clause 78.*—It is proposed to raise the penalty for failure on the part of a license-holder to produce his license, or for breach of rule under the Act, or condition of a license for which no other penalty is otherwise provided, from Rs. 50 as under the present Act (section 59) to Rs. 200. It is desirable to assimilate the practice of the Bill more closely to the Madras Act, which gives a freer scope in the punishment of breaches of excise licenses, but not more so than is desirable in the interests of effective administration.

55. *Clause 79.*—Under the present law (section 59) power is given to punish the licensee, but not his servant, for certain breaches of the license committed by a servant. Under clause 78 of the Bill it will be possible to punish the servant, but not the licensee-master, for a breach of the license committed by the servant. Under the Madras Abkari Act, section 64, the holder of an excise license, as well as the actual offender, is punishable for any offence committed by any person in the employment of the licensee or acting in his behalf as if he had himself committed the same, unless he can prove that all reasonable precautions were exercised by him to prevent the commission of the offence. It is considered desirable to assimilate the practice in Bengal to that in Madras, and clause 79 has accordingly been inserted in the Bill.

56. *Clause 85* is the natural sequence of the provision in clause 64 regarding the taking of bail. It is here proposed to be enacted that officers unreasonably refusing to release an arrested person on bail shall be liable to punishment.

57. *Clause 89*, which is based on section 59 of the Excise Act, XII. of 1896, declares that an attempt or abetment shall be equally punishable with the principal offence.

58. *Clause 91*, containing an exhaustive list of the articles which are liable to confiscation.

59. *Clause 94* provides for the compounding of offences under the Excise Act. Under the present law offenders have invariably to be prosecuted before a Magistrate, or their licenses have to be cancelled. There are many cases in which it would be to the advantage of both the offender and the revenue if the Collector had power to compromise.

60. *Clause 102*, giving power to exempt articles from provisions of the Act, has been somewhat amplified. The words "or for any specified period or occasion" have been added with special reference to the fact that concessions regarding *pachwai* brewing are allowed for special festivals.

61. *Clause 104.*—By sub-clause 1(a), Act XVI of 1863, which deals with methylated spirit, is expressly saved. The enactment of sub-clause (2) is desirable, as section 10 of the Bengal General Clauses Act is not sufficient to carry on the references to the Acts XI of 1849 and XXI of 1856, those Acts having been repealed by the Bengal Excise Act, 1878.

The 9th December, 1903.

C. E. BUCKLAND.

CALCUTTA;

The 22nd December, 1903. }

F. G. WIGLEY,

Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.



The Calcutta Gazette.

WEDNESDAY, AUGUST 5, 1903.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met in the Council Chamber on Saturday, the 18th July, 1903.

Present:

- The Hon'ble MR. J. A. BOURDILLON, C.S.I., Acting Lieutenant-Governor of Bengal, *presiding*.
The Hon'ble MR. L. P. PUGH, *Offg.* Advocate-General of Bengal.
The Hon'ble MR. C. E. BUCKLAND, C.I.E.
The Hon'ble MR. B. L. GUPTA.
The Hon'ble MR. L. HARE, C.I.E.
The Hon'ble MR. F. A. SLACKE.
The Hon'ble MR. W. C. MACPHERSON, C.S.I.
The Hon'ble MR. L. P. SHIRRES.
The Hon'ble MR. A. EARLE.
The Hon'ble MR. R. T. GREER.
The Hon'ble MR. W. A. INGLIS.
The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.
The Hon'ble BABU CHATURBHOOJ SAHAY.
The Hon'ble MAHARAJA MANINDRA CHANDRA NANDY, of Cossimbazar.
The Hon'ble MR. H. ELWORTHY.
The Hon'ble MR. A. A. APCAR.
The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.
The Hon'ble RAI TARINI PERSHAD, BAHADUR.
The Hon'ble MAHARAJA SIR RAVANESHWAR PRASHAD SINGH BAHADUR, K.C.I.E., of Gidhour.

NEW MEMBERS.

The Hon'ble MR. SLACKE, the Hon'ble MR. MACPHERSON, and the Hon'ble MR. SHIRRES took their seats in Council.

QUESTIONS AND ANSWERS.

SUBORDINATE JUDGE FOR NOAKHALI.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, asked—

Has the attention of the Government been called to a letter of the Noakhali correspondent, published in the *Bengalee* of the 28th June, 1903, regarding the inconvenience and harassment caused to litigants, owing to the delay in the disposal of Civil Suits by the District Judge of Noakhali, in consequence of the greater portion of his time being taken up by Sessions Cases and Criminal Appeals?

In view of the above, will the Government be pleased to post a Subordinate Judge at Noakhali; or make some other arrangement to redress the grievances of the people?

The Hon'ble MR. MACPHERSON replied:—

"The Lieutenant-Governor has read the letter in the *Bengalee* newspaper to which the Hon'ble Member refers.

"The question of appointing a Subordinate Judge in Noakhali has been for some time under the consideration of the Hon'ble High Court and the Bengal Government, and the matter is now before the Government of India."

CIRCULAR ISSUED BY THE DISTRICT MAGISTRATE OF MYMENSINGH.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, asked—

Has the attention of the Government been called to an article in the *Amrita Bazar Patrika* of 6th June, 1903, headed "A most dangerous Circular"? Is it a fact that such a Circular has really been issued by the District Magistrate of Mymensingh to the Subordinate Magistrates of the district? If so, does not the Government think that it is calculated to interfere with the judicial independence and discretion of the Subordinate Magistrates?

The Hon'ble MR. MACPHERSON replied:—

"The article to which the question refers was brought to the notice of the Lieutenant-Governor. The District Magistrate's attention has been drawn to the High Court's Circular Order of the 16th June, 1900, and he was requested to withdraw any circular which he may have issued in transgression of that order."

RE-ORGANIZATION OF THE SUBORDINATE EXECUTIVE SERVICE.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said—

The Hon'ble the Financial Secretary, in laying on the table the Bengal Budget Estimate for 1903-1904, observed: "The re-organization of Sub-Deputy Collectors has not yet been finally sanctioned"; and in that estimate Rs. 1,00,000 was allotted for the improvement of the status of the Sub-Deputy Collectors, one-half of which was shewn under the head of "Land Revenue" and the other half under the head of "Law and Justice"; and further in paragraph 30 of the explanatory notes on that estimate it was stated that "the increase under (1) is due to larger provision made under salaries for the proposed re-organization of the Subordinate Executive Service, which is awaiting the sanction of the Government of India." Will the Government be pleased to lay on the table the scheme for such re-organization, shewing how it has proposed to spend the said sum of Rs. 1,00,000, and to state whether such scheme has since received the sanction of the Government of India?

The Hon'ble MR. MACPHERSON replied:—

"The scheme has not yet received the sanction of the Government of India, and it is not at present possible to publish the details of it, which are still under careful consideration."

MISCONDUCT OF RAILWAY EMPLOYEES AT ASANSOL STATION.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, asked—

- Has the attention of Government been drawn to a scrap appearing in the *Amrita Bazar Patrika* of 13th June, 1903, complaining of the oppressive and impertinent conduct of Railway employes towards respectable passengers, and, amongst them, a Sub-Deputy Magistrate at the Asansol station, travelling with his family?

The Hon'ble MR. INGLIS replied:—

“The East Indian Railway authorities have instituted inquiries into this matter, and will no doubt deal with it effectively.”

WAITING-ROOM FOR NATIVE LADIES AT ASANSOL STATION.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, asked —

Is the Government aware that there is no suitable waiting-room for native ladies at the Asansol Railway station, and that a memorial has been presented to the East Indian Railway Authorities with a view to remove this want?

Will the Government be pleased to direct the Railway Authorities to arrange for some sort of *purda* accommodation on the down platform of the Asansol Railway station for native ladies, who are put to very great inconvenience on this account?

The Hon'ble MR. INGLIS replied:—

“The Lieutenant-Governor is informed that there is already a room set apart for native ladies on the up platform, and one on the down platform is being provided.”

SUPERINTENDENT OF STAMPS AND STATIONERY.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, asked—

Will the Government be pleased to state whether, in disposing of the post of Superintendent of Stamps and Stationery on retirement of Mr. Manson, it is not intended to give preference to the claims of such members of the Executive Branch of the Provincial Service as have, by their ability, experience and meritorious work, fitted themselves for that post?

The Hon'ble MR. SHIRRES replied:—

“The whole question of the organization of the Stamps and Stationery Department, and of the status of the officer who may, in future, be appointed to hold charge of it, is now under consideration. Until the question is decided, Government is not in a position to say how future incumbents of the post of Superintendent will be recruited.”

THE CHOTA NAGPUR TENANCY (AMENDMENT) BILL, 1903.

The Hon'ble MR. SLACKE in presenting the Report of the Select Committee on the Bill to amend the Chota Nagpur Landlord and Tenant Procedure Act and the Chota Nagpur Commutation Act, 1897, said:—“I have now, Sir, the honour to present to this Council the Report of the Select Committee on the Chota Nagpur Tenancy (Amendment) Bill, 1903, and in so doing would, with your permission, make some remarks with regard to certain of the matters referred to in the revised Bill. Copies of the Bill, as originally introduced, were sent to all those most interested in the districts to which it applies. The Bill itself was considered at a very representative meeting held at Ranchi in April last. The views then expressed have been duly considered, and the

Hon'ble Members of the Select Committee have been most materially assisted by the gentleman who will shortly take his seat in this Council as the Member for Chota Nagpur.

"In the Statement of Objects and Reasons attached to the Bill, as introduced into this Council, it was stated that the proposed amendments were designed to meet certain objects, eleven in number. Of these, one has been abandoned by the Select Committee, *viz.*, that to prevent the exacting of more than customary rates of rent from non-occupancy raiyats. The reasons for this have been stated in the Report. Five additional objects have been provided for in the clauses of the revised Bill. They are the following: (1) to make certain changes in procedure; (2) to provide for an appeal against orders passed in execution of decrees; (3) to grant the right of a second appeal to the High Court; (4) to remove, as far as possible, the causes which have tended to foster the agitation that has been disturbing the *Mundaris* Act of 1897 into line with that followed by the Settlement Officer, with regard to the record-of-rights when a survey and record-of-rights is being prepared, and predial services, etc., have to be compulsorily commuted.

"The first essential with regard to the admissibility of a proposed change was whether urgency could be pleaded in its favour. Unless this could be satisfactorily demonstrated, the adoption of a suggested amendment has not been recommended to this Council. Failing the necessary data which cannot as yet be furnished by the Settlement Officer, and which will not probably be fully available for a few years, it is impossible now to say to what extent the principle contained in the term 'settled raiyat' should be applied to Chota Nagpur. This affects the provision in the original Bill for facilitating the acquisition of occupancy rights. Although imperfect, it has been retained because it met some cases. Any attempt to improve it further would have led to the adoption, in some shape or other, of the principle of the 'settled raiyat,' a subject which, as I have just said, cannot be yet discussed.

"But advantage has been taken of the present opportunity to embody in the Bill a custom which is generally followed by all good landlords, *viz.*, to declare that the holder of lands known as *Korkor* or some other synonymous term has a right of occupancy in them. I would explain that *Korkor* is the term used to designate a field which a raiyat, by his own efforts, has converted from upland into riceland by terracing, and it presupposes the existence of a village which the term *khunt katti* does not. Clause 4 of the Bill restricts the sale or transfer of a raiyat's holding. The necessity for these restrictions must be explained. The right of a raiyat to sell his holding is not recognized in the Division, save in pargana Dhalbhum, in the district of Singhbhum.

"But though not recognized, raiyats are gradually more and more, though slowly, beginning to sell their holdings, and in course of time a custom will be established, unless measures are now taken to check it. Not to check the growth of any such custom would most probably result in the reduction of a vast number of the raiyats to the condition of serfs. There are already signs that this may happen, for in Dhalbhum the purchases by *mahajans* of raiyati holdings for the purpose of subletting them again at heavy rentals are increasing rapidly. To prohibit sale merely would not suffice.

"There are two recognised systems of usufructuary mortgage, *viz.*, the *zarpeshgi* and the *bhooghut bundha*. Under the former of these the profits arising from the land go merely to repay the interest due. Under the latter such profits extinguish both principal and interest. The former system is a most dangerous one among an aboriginal people, for though the debtor—a man who never thinks of the morrow and is always carried away by impulse—does not part with his land out and out and knows that he can get it back again on payment of the principal, yet in many cases such repayment is quite outside the man's means. Thus the *zarpeshgi* system tends to create a landless race, and the provisions in the Bill will, if accepted, do away with it.

"Of the danger of allowing transfer a good example is to be found in Ranchi in the case of the tenures registered under Bengal Act II of 1869. Of the tenures with which this Act dealt, one class, known as *bhuinharri*, was.

in reality merely holdings, and consisted of small areas of a few acres each cultivated by the aboriginal holders themselves. It was then held that the right of transfer attached to such tenures. The result has been ruinous, for to-day but very few are in the possession of the original holders or their descendants, having been parted with to others to obtain loans.

"The section in the original Bill which prohibited the sale of a raiyati holding, under any circumstances, was copied from the Central Provinces Act. In the Bill relating to that Act provision was made for the sale of a raiyati holding in execution of a decree for arrears of rent, but this was abandoned in the interests of the landlords who considered that the power of ejecting a defaulter was more to their advantage than that his holding should be brought to public sale. Here the converse is the case. The good landlords in Chota Nagpur consider that ejectment for failure to pay rent in the case of an occupancy raiyat is too harsh a remedy, and they point out that unless sale in execution of a decree for arrears of rent accruing on the holding itself is allowed, the defaulter will inevitably lose a portion of the value of the labour which he and his predecessors have put into the holding.

"Chota Nagpur is an undulating series of plateaus full of valleys, which in course of time have been, through the exertions of the tenants, terraced and converted into rice-fields. The gross value of the labour by which this conversion has been effected is immense. On the other hand, the total prohibition of sale and the retention of ejectment as the remedy has in one case been welcome as a means for getting rid of aboriginal tenants, and introducing in their places others who are better cultivators. Under these circumstances, I trust that the course selected by the Select Committee will commend itself to this Council, *viz.*, in the case of an occupancy raiyat to prohibit ejectment for failure to pay rent and allow a remedy by the sale of the holding, but only for arrears of rent accruing on the holding itself.

"To facilitate the obtaining of loans from Government under the Loans Act, it is provided that a holding for which a loan may have been granted can be sold to liquidate the debt. For this there is a precedent in the Central Provinces Act.

"In favour of the retention of the penalties provided in clauses 5 and 6 of the Bill with regard to the levy by landlords of anything in excess of what is legally due and to the non-giving of receipts, I would bring to the notice of this Council that much of the discontent that now characterises the relations between landlords and tenants in some parts of the Chota Nagpur Division, especially Ranchi, is due to the absence of any practical remedy to check such exactions, and to ensure that receipts are given. It is true that under the present Act a raiyat in the case of the landlord levying anything in excess of what is due, has a remedy by suit, but experience has fully shown that to give an aboriginal a remedy by suit is to give him no remedy at all. The tenant who has the means to institute a suit is not the tenant who will be oppressed, and the vast majority of the tenants in Chota Nagpur are persons who have not the means to go to the Courts.

"The preparation of a record-of-rights, such as is now being made, will provide landlords with what they have never hitherto possessed, *viz.*, data that are beyond suspicion and which can be utilized for the enhancement of rents. I have already pointed out that the law, even when amended as proposed, will not be satisfactory with regard to the question of occupancy right, and that nothing at present can be done to remedy this.

"The existing law is also sadly wanting in safeguards as to enhancement of rents. These two defects cannot be remedied until the work now being carried on by the Settlement Officers has progressed far enough to furnish the requisite data. The Settlement Officer at present is not allowed to enhance or fix fair rents, but is restricted to recording the existing rents, including settlements and predial services. Until these defects in the law have been removed, it is clear that unless some protection to the tenantry is now given much injustice may be done, and in all probability the people, seeing what will result, would probably stop any further continuance of the Settlement Officer's work. The periods provided in the original Bill were fifteen years in the case of occupancy raiyats and five for non-occupancy. To the Select Committee it appeared that for the purpose in view fifteen years for the former

was too long a period, and seven has been suggested. It will be for the Council to decide whether this is sufficient.

"It may be asked why any protection should be given to non-occupancy raiyats. To this I would reply that so far as the information at the disposal of the Settlement Officer goes, the majority of the raiyats, unlike what is the state of affairs in Bengal, are, as the law now stands, non-occupancy raiyats. This is due to the machinations of the petty landlords, and when the question of occupancy right comes to be dealt with finally, I feel sure that the bulk of those who have now to be recorded as non-occupancy raiyats will be converted into occupancy raiyats. It is to the interest of the petty landlords to prevent the growth of occupancy rights, and this, owing to the defective state of the law, as well as the ignorance and poverty of the people, they are able to a very great extent to effect.

"Under the existing law (section 34) if the transferee by way of succession or inheritance in the case of a certain class of tenures fails to register his transfer in the landlord's *sarrishta* within a given time, the landlord can apply to the Deputy Commissioner to be put in *khas* possession of the tenure, such application being dealt with by a summary procedure. This provision in practice was found generally unworkable; for the objection almost invariably raised was that the tenure did not come within the class to which the law referred. Such objection the Deputy Commissioner naturally refused to decide summarily, and referred the parties to the Civil Court. It has therefore been considered by the Local Authorities quite unnecessary to retain this provision in the Act, and the Select Committee, agreeing with them, have proposed to strike it out.

"The zamindars, who are most concerned, have, except in one instance, agreed to this, and the Maharaja of Chota Nagpur, whose estate covers about 8,000 square miles of country, considers that the retention of such a provision is inadvisable. The exception is the proprietor of the Padma or Ramghar estate, which includes about two-thirds of the district of Hazaribagh. In this estate there are many tenures, of which the terms of the grants give the grantor the right of entry on failure of the grantee to pay the rent due. Such right the gentleman in question considers will be imperilled if the section in question be removed. The Select Committee failed to see how this can result. Moreover, if this section be elided, a means for blackmailing will be removed.

"At present the grantee of a resumable tenure or his direct heir sells the tenure to another person, reserving a nominal rent charge. The purchaser can not register his sale in the zamindar's *sarrishta*, for the zamindar would by allowing this lose his right to resume the tenure on the happening of the contingency which gives him the right. On the death of the seller his heir, on the threat that he will not register his transfer by inheritance and thereby give the zamindar an opportunity to resume the tenure, effectually in some instances blackmails the purchaser, or the heir goes to the zamindar and in collusion with him omits to register his succession and so gives the latter the requisite opportunity. This state of things, in the opinion of the Maharaja of Chota Nagpur, should not be allowed to continue. In lieu of the existing procedure the revised Bill simply provides for the registration in the landlord's *sarrishta*, on payment of a fee of the transfer of any tenure, subject to certain provisos in order to safeguard the landlord's right to resume if the tenure is one liable to resumption. Inability to sue for arrears of rent is the penalty imposed on a transferee for failure to register, but no time, as proposed in the original Bill, is laid down within which he must register; for if that were done then in case he omitted to comply with it he could for ever be debarred from suing for arrears of rent.

"Clause 23 of the Bill provides a most momentous change in the interests of the landlords as regards tenures, and also a procedure for the sale of raiyati holdings. In Chota Nagpur there is a very large number of tenures resumable by the grantor or his successor in interest on the happening of a certain contingency, very often the failure of male heirs in the male line of the original grantee. Now the grantees, or their descendants, have in many instances parted with their grants to others, reserving for themselves some nominal amount of rent. The rents and cesses payable to the landlord fall into arrears. The landlords, for fear of losing their rights to resume, cannot sue the transferees for the arrears, and it is useless to sue the heir of the original

grantee. Consequently for some time the landlords have been unable to realise their rents and cesses, and are losing very large sums of money. The changes now proposed to be made have the effect of enabling the landlord to sell up the tenures without imperilling their right to resume where they have such right.

"I now come to the portion of the Bill dealing with the subject of *Mundari khunt kattidari* tenancies. The *Mundaris* are an aboriginal people, the first so far as we know to occupy the Ranchi plateau. They number about four lakhs, are now mostly congregated in the eastern part of the Ranchi and the western part of the Singhbhum districts. Others than *Mundaris* hold *khunt katti* tenancies in the Chota Nagpur Division, but as yet nothing has transpired to show the necessity for protective legislation with regard to them. In the Bill as originally drafted, no provisions exist analogous to those that have now been inserted. Their omission was due, not to any failure to recognize the need of such legislation, but because the materials on which to base the requisite provisions had not been collected. To obtain the information, a careful and minute local inquiry was needed. This Mr. Lister, the Settlement Officer, has, during the working season of the past and part of the current year, carried out.

"Owing to the non-recognition of their rights, the *Mundaris* for more than three-quarters of a century have been in a state of agitation, which from time to time has culminated in outbursts. In 1822 a horde of middlemen was let loose over the country by the then Maharaja of Chota Nagpur. These persons were up-country men. They were ignorant of, or oblivious to, the rights and customs of the aborigines, among whom naturally much discontent arose. This found a vent in the great *Munda* rebellion of 1832-1833, the immediate cause of which was an attempt by the Thakur of Sonpurgarh to destroy *khunt katti* rights in Bandgaon and Kochang in the district of Ranchi. The attempts to destroy the *khunt kattidars'* rights did not then cease, and they were the cause of the disturbances between landlords and tenants in that district in the year of the Mutiny. Both sides took advantage of the disorder that then prevailed—the landlords to oust the *khunt kattidars* who were holding at low permanent rentals, the *khunt kattidars* to recover the *khunt katti* lands which the landlords had previously succeeded in making *rajhus* or *manjhihas*, i.e., *raiya* or *sir*.

"Eventually the Chota Nagpur Tenures Act of 1869 was passed, and effected some improvement. But it omitted to deal with all the privileged lands, as it took no notice of intact *khunt katti* villages. This omission left such villages at the mercy of the spoliator. The destruction of the *khunt katti* tenancies went on, and the discontent thereby created brought about the outburst of 1888, when what is locally known as the *Sardar Zarai* began, and has not yet ceased. Utilising the bitter feelings of the *Mundaris*, some of their fellow-clansmen—they came to be known afterwards as *sardars*—persuaded the people that the Hindus had no right to the lands, that the lands belonged to the *Mundaris*, that no rents should be paid, and that the Sovereign had given a decree to this effect. The outburst that occurred at the time was put down, but it again broke out in 1899-1900 under the leadership of one Birsa, who styled himself a God.

"This prolonged disaffection is the reason that has led Government to have a survey and record-of-rights made of the *Mundari* country. But if steps are not taken to safeguard by legislation the rights of those people and to secure the finality of the record-of-rights, the latter by itself will not suffice to quieten the agitation. As long ago as 1839 it was reported that unless these people are protected in the possession of their lands, we never can be certain of the peace of the country. Once the necessary facts have been obtained, as is now the case, such legislation cannot be delayed, because the attacks which have been made on these rights so pertinaciously and for so long a time will be carried on with a greatly increased vigour, owing to the need of acting before the law can intervene.

"A *khunt kattidar* is the founder or the male descendant in the male line of the founder of the village in which are situated his *khunt katti* lands.

"The tenancy is of two kinds, the difference between them being merely one of area. It is either the tenancy of the whole brotherhood, the descendants

of the original founder, or that of an individual member of the brotherhood over the lands in his immediate possession.

"The Settlement Officer, owing to the burial custom of the *Mundaris*, can easily ascertain whether the claim to hold certain lands as *khunt katti* is true or not. No *Mundari* can rightly be buried save in the burial ground of the village of which his ancestor on the paternal side was the founder. When a *Mundari* wished to found a new village he either alone or with some of his kinsmen on the paternal side obtained the jungle tract he desired. The area so acquired was invariably large, in some cases extending to square miles. His object was to bring by himself, or through his male descendants, portions of it under cultivation, but it was open to him or his male descendants acting jointly, to give portions to other *Mundaris* either to cultivate as raiyats or to establish other *khunt katti* villages. The system is one which originated long before the advent of the Hindus into Chota Nagpur. Originally no rent was payable, but this was changed. Rent and services came to be demanded, and were given. This rental was, and is in most cases a permanent one, and cannot be enhanced save under certain circumstances as given in section 19 of the existing Act.

"It has therefore been found, *firstly*, that the landlord has no power of control over the internal affairs of the village. *Secondly*, that the *khuntkattidars* of a village must be the male descendants of one family, and hence, members of the same *kulli* or *gotra*. *Thirdly*, that the tenancy is not a tenure or a raiyati holding in the sense that now attaches to those terms, but that it partakes, to some extent, of the nature of both. *Fourthly*, that where the pure *khuntkatti* system prevails there is no recognized system of transfer, save (i) to men of the same race, and that only for cultivation, or (ii) to *mahajans* temporarily for financial needs. *Fifthly*, that a transfer requires the joint consent of the brotherhood. *Sixthly*, that the resident male descendants of the original grantee have equal rights. *Seventhly*, that the rental can only be enhanced under the conditions given in section 19 of the Act.

"For the purposes of village administration it is necessary that there should be an executive and also a spiritual head. The former is the *Munda*, and the latter the *Pahun*. The grantee, if alone, combined both offices, and on his death his eldest son became the *Munda*, and his second son the *Pahun*. These posts became as a rule hereditary in the families of these sons. The *Munda* is the spokesman and representative of the brotherhood in secular matters relating to the village, and so far as the brotherhood is concerned has no greater rights than any of the other members. But in his name the village came to be registered in the *sarrishta* of the landlord, and hence arose one of the causes that has led to the disintegration of so many of these *khuntkatti* villages and the discontent of the *Mundaris*. Seeing that the tenancy was in the name of the *Munda* only, the Courts treated him as a tenure-holder and the other members of the brotherhood as his tenants. Consequently when the rent fell into arrears he alone was sued, and his supposed rights sold. On getting possession the purchaser, an alien, proceeded to treat the other members of the brotherhood as if they were raiyats or even as mere tenants-at-will. The knowledge of this has also induced many *Mundas* themselves to destroy the rights of their weaker brethren, and thereby gradually obtain for themselves the position of petty zamindars.

"Wherever in a *khuntkatti* village the process of disintegration has set in, there will be found some lands in the possession of the descendants of the original founder and held by them as *khuntkatti* lands. Such portions of land were those that were registered and dealt with under the name of *bhuinharri* lands by the Special Commissioners who carried out the provisions of the Chota Nagpur Tenures Act, 1869. Babu Rakhal Dass Haldar, an officer, who for over nine years was engaged on this work, described such lands as the remnants of the old *khuntkatti* tenures.

"As I have already said, the Act to which I have just referred did not provide for the registration of whole *khuntkatti* villages, though their nature and that of the *bhuinharri* lands was the same. In 1871 Mr. Oliphant, then Deputy Commissioner of what is now known as Ranchi, recommended that a simple demarcation with registration should be made of all such *khuntkatti* villages in order to make the holders secure in the possession of their holdings.

But Colonel Dalton, the then Commissioner, thought this would be exceedingly difficult, except as part of a regular revenue survey of the district. Accordingly the proposal was rejected by Government on the ground that nothing had occurred to bring the *khuntkattis* to special notice. It is much to be regretted that no such survey and registration was then effected. For since 1871 many villages, then wholly *khuntkatti*, have ceased to be such. The work of destruction has been chiefly effected through the agency of the Courts assisted by a political agitation in the shape of a refusal to pay rent and by the greed of the *Mundas*. Such villages became what, for want of a better term, I can only call mutilated *khuntkatti* villages. They are to be found in all stages of decay, but in each are lands held by descendants of the founder and claimed as *khuntkatti*. I have refrained from using the term *bhuinharri* to describe such lands because since the passing of the Act of 1869 a certain legal significance has become attached to that term, which it is not desirable to adopt here. Apart from this, however, the terms are really synonymous. They were so employed by Dr. Davidson in 1839, and are still so used by the people in the south-east of Ranchi.

"The sections in the revised Bill with regard to *Mundari khuntkattidari* tenancies embody what the Select Committee, after hearing and examining Mr. Lister, consider to be essential in order to allay, as far as possible, the agitation which has been going on for so long a time among the *Mundaris*. Their acceptance will greatly weaken the agitation, but will not satisfy the extreme party of the *Mundaris*, whose wishes are impossible of attainment, as they want the Government to go back to what, in their opinion, was the state of the country before the Hindus entered it.

"The objects it is desired to secure are (1) to prohibit sale; (2) to stop all forms of mortgage save that known as *bhucoghut bundha*, and thereby prevent these savages becoming the serfs of money-lenders; (3) to follow recognized custom and allow certain forms of transfer to other *Mundaris*; (4) to invest the Deputy Commissioner with power to give effect to this prohibition of sale and certain restrictions on transfer; (5) to provide for the realization of arrears of rent; (6) to secure the finality of the record-of-rights. The joint and individual responsibility of the members of the brotherhood of a *Mundari khuntkattidari* tenancy with regard to the rent will be noted in the record-of-rights as well as the nature of the right, whatever it may be, of the landlord to resume. As to prohibition of sale, I would point out that the idea of sale is repugnant to the *Mundaris*, wherever they have not come under the influence of alien theories. Writing in 1871, Mr. Oliphant, whom I have previously mentioned, advocated the enforcement by law of the prohibition issued in 1832-33 by Captain (afterwards Sir Thomas) Wilkinson, the Governor-General's Agent, forbidding *Mundars* to part with their lands to foreigners or aliens. Speaking of the rules under the Chota Nagpur Tenures Act in relation to *bhuinharri* lands, Mr. Webster, I.C.S., in 1875, pointed out that the right of transfer thereby granted was an innovation. Writing in 1880, Babu Rakhal Das Haldar, to whom I have already referred, stated with regard to *bhuinharri* lands that where they were held jointly or under the control of a single Head *bhuinharri*, no transfer can be made unless with the consent of all the members. The procedure devised for the realisation of arrears of rent in the case of tenancies for which a record-of-rights has been prepared will for the first time give the *Munda* a practical means to compel defaulting members of the brotherhood to pay up their quotas. Hitherto he was quite unable to do this, as he had not the means, for the cost of a suit was prohibitive, since in individual cases the sums due amounted to only a few annas. Hence when through the advice of the *sardars* the members of the brotherhood refused to pay any rent the *Munda* was helpless, and when the *Munda's* own credit no longer sufficed to enable him to raise the requisite sum, the tenancy was sold up. Under the powers now proposed to be given, the Settlement Officer will be able not only to secure for the members of a *Mundari khuntkatti* brotherhood in an intact *khuntkatti* village the safe enjoyment of their tenancy, but will also be able to protect from further molestation the *Mundaris* who are the descendants of the original founder of a village and hold *khuntkatti* lands in mutilated *khuntkatti* villages.

"It may be asked why not, instead of these sections, employ the Chota Nagpur Tenures Act of 1869? To that I would reply that this Act either does not go far enough or goes too far. It does not provide for intact *khuntkatti* villages. It provides no prohibition against sale. It does not regulate transfer other than sale. It does not provide for recovery of arrears of rent. It treats such tenancies as tenures, which they are not. Lastly, it provides for retrospective effect, and that in the present instance could not be asked for. I would here read to the Council what the Settlement Officer states on the subject, since it describes exactly what is intended to be done:—

'In other villages the descendants of the *khuntkattidars* are treated as ordinary raiyats by the *Munda* or by the *Dikku* zamindar. Here, too, we must ascertain what lands they have continued to cultivate from *khuntkatti* days, and record them as *khuntkatti*. Even if the zamindar has enhanced the rent of such lands, contrary to the customary rights of the cultivators, whilst we cannot repair the injury, we can prevent future wrong-doing by recording the real nature of the lands.'

"Turning to the proposed amendments in the Commutation Act of 1897 (Ben. IV of 1897), it will be seen that in the revised Bill certain changes in procedure are proposed where a survey and record-of-rights is being carried out, and Government has issued an order under section 5 of the Act for the compulsory commutation of *rakumats* or payments in kind and predial services. The commutation of these *rakumats* and services having been decided on, the experience gained by the Settlement Officer shows that unless the procedure under the Act is assimilated to that for the record-of-rights, a large part of the work will have to be done twice over, and as the cost of commutation will have wholly to be met by the landlords and tenants, this will entail on them a heavy burden. To save this, which for the district of Ranchi alone would come to some lakhs of rupees, the change in procedure has been suggested."

The Council was adjourned to Saturday, the 1st August, 1903.

CALCUTTA;

The 4th August, 1903.

F. G. WIGLEY,

Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 2, 1903.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

THE Council met in the Council Chamber on Saturday, the 1st August, 1903.

Present:

The Hon'ble Mr. J. A. BOURDILLON, C.S.I., Acting Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble Mr. L. P. PUGH, *Offg.* Advocate-General of Bengal.

The Hon'ble Mr. C. E. BUCKLAND, C.I.E.

The Hon'ble Mr. B. L. GUPTA.

The Hon'ble Mr. L. HARE, C.I.E.

The Hon'ble Mr. F. A. SLACKE.

The Hon'ble Mr. W. C. MACPHERSON, C.S.I.

The Hon'ble Mr. L. P. SHIRRES.

The Hon'ble Mr. A. EARLE.

The Hon'ble Mr. W. A. INGLIS.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU CHATURBHOJ SAHAY.

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDY, of Cossimbazar.

The Hon'ble Mr. H. ELWORTHY.

The Hon'ble Mr. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble MAHARAJA SIR RAVANESHWAR PRASHAD SINGH BAHADUR,
K.C.I.E., of Gidhour.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

NEW MEMBER.

The Hon'ble BABU KALI PADA GHOSH took his seat in Council.

QUESTION AND ANSWER.

MUNSIFS' RESIDENCES.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—

In paragraph 48 of the Explanatory Notes on the Bengal Financial Statement for 1902-1903, it is stated that the allotment for original works includes a grant of Rs. 40,000 for Munsifs' residences. Will the Government be pleased to inquire and state whether the whole of this sum was spent during the year 1902-1903? If not, what is the reason? Will the Government be pleased to specify the names of the places where such residences were built during the year 1902-1903 out of this grant of Rs. 40,000?

The Hon'ble MR. INGLIS replied:—

"The actual expenditure incurred during the year 1902-1903 was Rs. 39,603 on residences for Munsifs at the places named below:—

- | | |
|-----------------|------------------|
| 1. Gumla. | 9. Hathazari. |
| 2. Cox's Bazar. | 10. Kishoreganj. |
| 3. Chandpur. | 11. Hajipur. |
| 4. Patya. | 12. Patuakhali. |
| 5. Perozepore. | 13. Hatya. |
| 6. Bhola. | 14. Thakurgaon. |
| 7. Atia. | 15. Kishenganj. |
| 8. Bagerhat. | 16. Jamalpur. |

THE CHOTA NAGPUR TENANCY (AMENDMENT) BILL, 1903.

The Hon'ble MR. SLACKE moved that the Report of the Select Committee on the Bill to amend the Chota Nagpur Landlord and Tenant Procedure Act and the Chota Nagpur Commutation Act, 1897, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SLACKE also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The Motion was put and agreed to.

Clause 2.

The Hon'ble MR. SLACKE also moved that the following be inserted after clause (g) in clause 2 (2) of the Bill, namely:—

'(h) "Mundari khunt-kattidari tenancy" means the interest of a Mundari khunt-kattidar.'

He said:—"The reason for this amendment will, I think, be obvious to the Council. In several sections of the Bill reference is made to a Mundari khunt-kattidari tenancy, but no definition of this has been provided. It seems therefore necessary to provide for this defect, and accordingly I would suggest the adoption of this amendment."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that, in sub-clause (h) of clause 2 (2) of the Bill, the words "any Act for the time being in force for the registration of documents" be substituted for the words "the Indian Registration Act, 1877." He said:—

"This definition is given in the Bengal Tenancy Act, and I think it is more comprehensive than in the present Act, and could, with advantage, be adopted."

The Hon'ble MR. SLACKE said:—"I have nothing to urge against the acceptance of this amendment."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, also moved* that in line 5 of sub-clause (n) of clause 2 (2) the word "raiylats" be substituted for the word "tenants." He said:—

"This was the subject of some discussion in the High Court, and I fear that the use of the word 'tenants' might create some confusion. I therefore submit that we should substitute the word 'raiylats' for the word 'tenants.'"

The Hon'ble MR. SLACKE said:—"I am unable to support this amendment, and that for two reasons. In the first place, I am unable to satisfy myself that there is any definite ground for departing from the wording given in section 5 of the Bengal Tenancy Act, from which this was taken, and, *secondly*, because I am at a loss to understand why a tenure-holder should be deprived from creating an under-tenure, which would be the effect if this amendment were adopted. For these two reasons, I cannot recommend to the Council the acceptance of this amendment."

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, in reply, said:—"After the expression of opinion we have just heard from the Hon'ble Member in charge of the Bill, I do not desire to press my amendment."

The Motion was then, by leave of the Council, withdrawn.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that to sub-clause (o) of clause 2 (2) of the Bill the following be added, as Explanation II, the Explanation which is already attached to the sub-clause being made "Explanation I," namely:—

'Explanation II.—A person acquiring at the same time a right to hold land both for the purpose of cultivating it by himself or by members of his family or by hired servants or with the aid of partners, and for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, or partly for one such purpose and partly for the other, is not a "raiylat" within the meaning of this definition.'

He said:—"In moving this amendment, I must say that I do not question the correctness of the definition of 'tenure-holder' in sub-clause (n) or that of 'raiylat' in sub-clause (o), so far as they go; but what I want, and I must insist upon, is an addition by way of explanation which will enable raiylats, tenure-holders, superior landlords and the Courts that may have to deal judicially in regard to questions arising before them to understand correctly the relative rights of such raiylats, tenure-holders and superior landlords. I must say also, Sir, that it will be dangerous to leave sub-clauses (n) and (o) alone without an Explanation."

"In venturing to support the amendment I have proposed, I must place before the Council certain facts which are material for arriving at a conclusion. The raiylati right must necessarily owe its origin to a contract, expressed or implied. I hold in my hand a paper-book of the High Court in a case which went from Hazaribagh to that Court in regular appeal. There are numerous farming leases, or counterparts of such leases, in this paper-book, all of which contain conditions to the following effect:—

'The farmer or the lessee shall cultivate lands by himself and cause lands to be cultivated by others. He shall collect rents from raiylats.'

"I have another paper-book in my hand which relates to a case that came to the High Court from the district of Bhagalpur. The lease in this case contains a condition as follows:—

'The lessee shall cultivate lands by himself. He shall maintain raiylats in possession, and shall collect rents from them.'

"I here crave leave to appeal to your Honour's experience in Bihar generally for a period of upwards of 20 years to bear me out, that the system of grant of farming known as *mostajir* leases are very common in that Province. My native home is in the district of the Sonthal Parganas, and I am connected with the district of Monghyr in several ways. These districts

are next-door neighbours to the district of Hazaribagh, in the Ranchi Division. I do possess some knowledge of the habits and customs of the people of some portions of the Ranchi Division. In all these places, so far as I know, farming leases and their counterparts are systematically exchanged. The land tenures in India are well understood at the present day. But when we deal with them in legislative measures and undertake to define the rights of the holders thereof, it is desirable to give a complete, or at any rate sufficiently comprehensive, shape to the definitions to prevent difficulties and litigations in future. In the absence of an explanation of sub-clauses (n) and (o), the difficulty that I have met with in very many cases since the Bengal Tenancy Act came into operation justifies the amendment I propose. Suppose, Sir, on the expiry of the term of a farming lease, when the out-going farmer, who has succeeded in bringing under his cultivation a large area during his possession, sticks to the possession of such area and refuses to quit possession thereof, saying 'I acquired right to cultivate lands in the estate.' 'I have cultivated lands.' 'I have paid rents for the same.' 'I am legally entitled to hold on.' 'I am a raiyat with or without right of occupancy.' 'I was not a tenure-holder in respect of such lands, and I am not bound to quit possession thereof otherwise than in due course of law'.

"I submit, Sir, under these circumstances that with the definitions in sub-clauses (n) and (o), the superior landlord will find difficulty in turning him out of possession of such lands, standing alone, and at all events a wide door to serious litigation will be opened in Chota Nagpur, as has been done in places where the Bengal Tenancy Act is in force.

"It is not a difficult task for the farmers and *mostajirs* to bring under their grasp large areas by dispossessing poor raiyats in Chota Nagpur, or otherwise bringing waste lands, easy of reclamation, lying in the estates under their *khas* possession. They will make encroachments upon the village rights—rights and privileges of raiyats which were recognized during the time of the Hindus and the Muhammadan Government, and which, up to the present day, have been recognized by the British Government. Our Statutes have proceeded throughout on the lines of the ancient rights and privileges of the raiyats and the customary incidents attaching thereto. If the definition of a raiyat in the Bill be not made sufficiently comprehensive and clear, the result will be to leave the parties, their advocates and the Court to straining, turning, twisting and torturing of the words used in sub-clauses (n) and (o) without being able to arrive at any reasonable and fair conclusion."

The Hon'ble MR. SLACKE said:—"I cannot, Sir, advise the Council to accept this amendment. In the first place, the object of the amendment is to prevent farmers of rents, *thikadár* and such like persons from acquiring, during the currency of their leases, a right of occupancy in the lands let to them under such leases. When introducing the Report of the Select Committee on this Bill, I pointed out that, owing to the absence of the necessary data, which cannot for some years be furnished by the Settlement Officer, we were now unable to deal satisfactorily with the question of occupancy right as a whole. *Secondly*, although the subject-matter of this Bill has been under discussion for a very long time, not one single zamindar has pointed out the necessity of having such a clause in the Bill. In the absence, therefore, of any such proved need, to accept this amendment would, in effect, be to abandon the principle that guided the Select Committee in dealing with the Bill. It would also be very dangerous to deal any further with the question of occupancy right when, as I have already pointed out, we lack the requisite information on the subject.

"Should, however, events occur which, in the opinion of the local officers, would require action to be taken to prevent by law farmers, etc., from acquiring occupancy rights in the lands covered by their leases and, if such need arise, before the Act as a whole could be revised, the Government can, by extending section 22 (3) of the Bengal Tenancy Act to Chota Nagpur, provide a sufficient remedy at once.

"I would therefore suggest that this amendment be rejected."

The Hon'ble BABU CHATURBHOOJ SAHAY said:—"The amendment which is sought to be introduced by the Hon'ble Rai Tarini Pershad, Bahadur, is that in cases where one and the same person has got two functions as it were, namely, that of a raiyat and that of a tenure-holder, then so far as he cultivates land by himself, or by hired labourers, he should not be deemed a raiyat within the meaning of this sub-clause (o). But, then, the amendment that he moves seems to be unnecessary, as will be seen if we refer to the following portion of sub-clause (o): 'A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder, or immediately under a Mundari khunt-kattidar.' Let us suppose that A takes a lease from the proprietor of a village, and that he is also permitted to cultivate a portion of the land in the village as a raiyat. Now he cannot be a raiyat unless he holds immediately under the proprietor; but he does not hold immediately under the proprietor because the village has been leased, nor immediately under the tenure-holder because he does not hold under the tenure-holder, he being himself the tenure-holder. So such a person cannot be a raiyat because he would be holding under himself, he himself being the tenure-holder. Therefore that part of my friend's amendment seems to be covered by the paragraph that appears after the Explanation to sub-clause (o). He cannot be a raiyat because a raiyat has to pay rent to the zamindar or *málik*, and he cannot pay either to himself or to the *málik*, because the *málik* is the lessor of the land. Under these circumstances, the amendment seems to me to be unnecessary."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"The amendment moved involves a serious question of principle, and I do not intend to record a silent vote against it. It seems to me quite clear that, as a matter of principle, this amendment ought not to be accepted. A tenure-holder under the Act means primarily a person who acquires land not for the purpose of cultivating it himself, but for the purpose of settling tenants on it and collecting rents from them. A raiyat, on the other hand, is defined to be primarily a person who acquires land for the purpose of keeping it himself and cultivating it either by himself, or by the members of his family or by his servants, or with the aid of partners. My hon'ble and learned friend is contemplating the case of a person who acquires land for both these purposes, or partly for one of these purposes and partly for the other, and wants us to hold that his function is that of a raiyat, and that he should not be regarded as a tenure-holder. I submit that this is entirely wrong on principle. Suppose a man acquires 100 bighas, and in his lease it is stated that he may either cultivate it himself or settle tenants thereon; if he cultivates the entire 100 bighas himself, I take it that the inference should be that he is a raiyat. If, on the other hand, he settles tenants on the 100 bighas, he should be regarded as a tenure-holder. My hon'ble and learned friend says: 'No, if he has a lease in which it is stated that he may use it in either way, he can never be regarded as a raiyat although he cultivates the land himself.' In the same way if he takes 50 bighas and settles tenants thereon and takes another 50 bighas for cultivating it himself, my hon'ble and learned friend says he cannot be regarded as a raiyat in respect of the one and as a tenure-holder in respect of the other. I submit this cannot possibly be a correct view of the matter."

The Hon'ble BABU KALI PADA GHOSH said:—"I submit that I cannot support the amendment of my hon'ble and learned friend for two reasons. In the first place, in considering the circumstances of Chota Nagpur, it is not an urgent amendment, and, in the second place, the object contended for by my hon'ble and learned friend is very well met by another amendment which he subsequently moves and with which I have every sympathy."

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, said:—"I am also opposed to this amendment on this simple ground that, if carried, it would limit the meaning of the word 'raiyat.' I would like to see the meaning of 'raiyat' to be as wide as possible, and do not think it should be restricted in the way proposed by this amendment."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, in reply said:—"When we are defining 'tenure-holder' and 'raiyat,' we must not leave the definitions defective. I submit, Sir, for the reasons I have already given, they should be

made clear. The necessity for definition of 'raiyat' and 'tenure-holder' has arisen, and they should be defined clearly, and what I want falls clearly within the legitimate scope of the Bill. I, therefore, must say that the Council should see their way to accept the amendment I have moved."

The Motion was then put and lost.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that after sub-clause (o), in clause 2 (2) of the Bill, the following be inserted, namely:—

'(p) "Under-raiyat" means a tenant holding, whether immediately or mediately, under a raiyat.'

He said:—"I thought there would be some difficulty if, in the Bill as it stands, an Explanation of this sort was not inserted, but having had the benefit of a discussion with the Hon'ble Member in charge of the Bill, and having regard to the fact that the Bill does not deal with 'under-raiyats,' I have considered it proper to withdraw this amendment, and I accordingly do so."

The Motion was then, by leave of the Council, withdrawn.

New Clauses.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council withdrew the following motions, of which he had given notice, namely:—

(1) "That after clause 2 of the Bill the following be inserted, namely:—

'2A. In section 5 of the said Chota Nagpur Landlord and Tenant Procedure Act, after the word "raiyat," the words "and every Mundari khunt-kattidar" shall be inserted.'

(2) "That the following be inserted, namely:—

'2B. (1) In section 6 of the said Chota Nagpur Landlord and Tenant Procedure Act, after the words "twelve years" the words "and every Mundari khunt-kattidar who has cultivated land for a period of twelve years" shall be inserted.

'(2) In the same section, after the word "raiyat," in the second place in which it occurs, the words "or Mundari khunt-kattidar" shall be inserted.'

He said:—"The Hon'ble Member in charge of the Bill has satisfied me that these amendments are not required, and I beg leave to withdraw them."

Clause 3.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, also withdrew the following motions, of which he had given notice, namely:—

(1) "That in the first paragraph in the new clauses in clause 3 of the Bill, after the word 'raiyat' the words 'or Mundari khunt-kattidar' be inserted."

(2) "That in the second paragraph in the new clauses in clause 3 of the Bill, after the word 'holds' the words 'and every Mundari khunt-kattidar who cultivates' be inserted."

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that the following be inserted in clause 3 of the Bill, namely:—

'The words "so long as he pays the rent payable on account of the same," in section 6 of the said Chota Nagpur Landlord and Tenant Procedure Act, are repealed.'

He said:—"I may remind Hon'ble Members that these words 'so long as he pays the rent payable on account of the same' are to be found in Act X of 1859, but they were subsequently omitted, and I must say advisedly omitted in the Act of 1885. It appears to me, however, that these words in the clause are ambiguous and meaningless. If they are allowed to stand, a tenant who has acquired a right of occupancy by holding for 12 years may lose his right if he fails to pay rent for a year or two. I may also tell the Council that the right of ejectment was given to landlords, but in the present Act that right has been taken away. Therefore I submit that these words, 'so long as he pays the rent payable on account of the same', should be omitted."

The Hon'ble MR. SLACKE said:—"I have nothing to say against the proposed amendment."

The Hon'ble BABU CHATURBHOOJ SAHAY said:—"I am afraid I must oppose this amendment. My hon'ble and learned friend says that these words find a place in Act X of 1859. I may go further and state that they were also reproduced in Act VIII of 1869. Then my hon'ble friend quotes the authority of the Bengal Tenancy Act, and says that it is not to be found there. But I do not see that anything that is to be found there or not to be found there should be our guide in legislating for the Chota Nagpur Division. Chota Nagpur, as we all know, is not so advanced as the rest of Bengal, and what would apply to Bengal proper might not apply in any way to Chota Nagpur, and hitherto this has been the law that has prevailed there without any complaint, and without anything in fact to disturb the relations between the landlord and tenant on this point. Therefore I submit that a law that has existed up to now without having given rise to any friction should not be taken away. The principle of the amendment was not recognized in the original Bill, nor is it in the revised Bill, but now my hon'ble and learned friend is seeking to amend section 6 of Act I of 1879 in this way, and I think that this is not the proper time or the proper place to change a portion of the law which has answered very well up to this time. Why then deprive the zamindar of this privilege or this benefit of section 6 that he has enjoyed so long? My hon'ble friend will bear me out that there is no justification for seeking to introduce this amendment at this stage, and I also submit that it is not required either for the exigencies of the State or for any administrative purposes."

The Hon'ble MR. GUPTA said:—"I am afraid that the Hon'ble Babu Chaturbhooj Sahay is under a slight misapprehension in opposing this amendment. It is true that these words did occur in the older Act and not in the Act that we are now going to amend. The landlord had the right of ejecting the tenant on failure to pay rent, and there was no sale of his occupancy rights. Therefore it was rightly stated there that he forfeits his occupancy rights on failure to pay rent, thereby giving the landlord the right to eject him. But in the present Bill, we take away the right of ejectment and we make the occupancy right saleable. Therefore, if we say that on failure to pay rent he loses his occupancy rights, what shall the landlord sell? If he has defaulted for two years and the landlord gets a decree for arrears of rent, and under this clause the tenant shall have forfeited his right of holding, and if he has forfeited his right, how can that right be sold? Since we are taking away the right of ejectment and giving landlords the right of selling occupancy holdings, we should make the Act consistent with that. I think that the alteration of the law that we have made by this Bill necessitates this change in order to make the Act consistent in itself."

The Hon'ble BABU KALI PADA GHOSH said:—"I am strongly in favour of the amendment which will meet the position, instead of placing landlords in the worst position possible as proposed by the Hon'ble Babu Chaturbhooj Sahay. Now in this Bill we make occupancy rights saleable in execution of a decree for arrears of its own rent. Under the late Act, which we are amending, the zamindar's only remedy was by ejectment, and that right has been taken away in the case of occupancy holdings and this right substituted, and, as has been very rightly pointed out by the Hon'ble Legal Remembrancer, unless we accept the amendment, it can be very well contended that, in not paying arrears of two or three years' rent, the raiyat has lost his occupancy right, and therefore there being no right, the occupancy holding cannot be put up for sale as the Bill now provides. I therefore hope that the amendment will be carried."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I am strongly in favour of this amendment for the reasons stated by the Hon'ble Mr. Gupta."

The Motion was then put and carried.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, also moved that the words "so long as he pays the rent payable on account of the same" in clause 3 of the Bill, be struck out.

The Hon'ble MR. SLACKE said:—"I have nothing to urge against this amendment."

The Motion was put and agreed to.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that the following be added at the end of clause 3 of the Bill, namely:—

'Any person holding land as a farmer or other tenure-holder shall not, while so holding, acquire a right of occupancy in respect of any land comprised in his farm or tenure, even though he may have cultivated it by himself or by members of his family or by hired servants or with the aid of partners.

'*Explanation.*—A person having a right of occupancy in land does not lose it by subsequently holding the land in farm or tenure.'

He said:—"I submit that this amendment is necessary and desirable. A similar provision in the Bengal Tenancy Act is my justification for bringing forward this motion. A farmer or *mostajir* cannot acquire raiyati right by holding land while he holds the farm. If he, while holding as a farmer or *mostajir*, acquires occupancy right by purchase or other mode of transfer, he is welcome to it. A provision such as I seek by my amendment is desirable."

The Hon'ble MR. SLACKE said:—"I am unable to advise the Council to accept this amendment. The reasons which I gave with regard to item 6 in the agenda apply equally to the present amendment proposed. In the first place, it is not a matter of urgency at all. None of the zamindars, or those who have property in Chota Nagpur, have ever asked that this should be brought into the present Bill. In the second place, we are dealing with a subject, as I remarked before, about which we stand at present in a great deal of ignorance. Whenever necessity should arise, the Executive Government can by notification extend the operation of section 22 (2) of the Bengal Tenancy Act to Chota Nagpur or any portion thereof. This is a point which has not yet arisen. For these reasons, I cannot accept the adoption of this amendment."

The Hon'ble BABU KALI PADA GHOSH said:—"I feel bound to say that I am in favour of this amendment; but if you ask whether I consider it one of extreme urgency, I say no; but this raises a question so well established that I am strongly in favour of this amendment. Whenever such cases arise in Chota Nagpur, we are obliged to look for all the cases on the subject. This point has been decided by the High Court, and this amendment does not make any change in the existing law, but its object is simply to codify the cases. That being so, I am bound to support the amendment."

The Hon'ble MR. GUPTA said:—"The reasons which have been adduced by the Hon'ble Babu Kali Pada Ghosh are the very reasons for which I beg to oppose the amendment, because the law is so clearly established independent of any express provision that we do not require this express provision in the Act. This provision has been no doubt inserted in the Bengal Tenancy Act, but in so doing the Legislature only recognised the case-law as it stood then, and, as far as the cases go back, even under the Act of 1859 (Act X of 1859), it was held by the High Court that a farmer who cultivates land for himself cannot acquire the right of occupancy. I believe the reason is this,—that the right of occupancy is a right really adverse to the landlord. It is a right acquired in derogation to the proprietor's right. The right of occupancy means that the raiyat says: 'I hold this in spite of you.' Now, if a farmer holds land under himself, he cannot acquire a right adversely to himself. He cannot acquire any right in derogation of his own right. It is upon this principle that it has always been held that a farmer cannot acquire any right of occupancy in any land which he himself cultivates. That being the state of the law, what is the necessity of introducing this amendment into a simple Act of this kind, when we are dealing with a non-regulation province, where we want to make everything as

simple as possible? Of course, there are many excellent principles in the Bengal Tenancy Act, which might, with advantage, be extended to this Act, but we have not thought it proper to do so, *firstly*, because there is no necessity for it, and, *secondly*, if any necessity is proved, the Government has power to extend any provisions of the Bengal Tenancy Act to Chota Nagpur. My hon'ble friend has not shown that the introduction of this principle into Chota Nagpur is necessary; but as soon as it is shown that it is necessary, the local authorities have only to move the Government in order to extend this particular provision of the Tenancy Act into Chota Nagpur. That is to say, if the Courts of Chota Nagpur pass any decision contrary to the principle, the interference of the Government will be necessary. Legislation will not be necessary. It will only be necessary to extend the provisions of the Tenancy Act into Chota Nagpur by a notification in the Government Gazette. The Hon'ble Babu Kali Pada Ghosh, whose experience in Chota Nagpur has been very long, does not say that the Courts of Chota Nagpur have ever given a decision that is contrary to the case-law on the subject. Therefore, if the case-law on the subject is clear and there is no necessity for this amendment, I think we ought to leave it alone."

The Hon'ble MR. PUGH said:—"I also think that the amendment ought not to be accepted. I think it is extremely undesirable to put in any clauses from the Bengal Tenancy Act into this Act for which there is no sufficient reason made out. Although the Bengal Tenancy Act says that a tenure-holder cannot acquire a right of occupancy under certain circumstances, I venture to think it is unnecessary to insert such a provision here.

"There is another objection from my point of view, and that is the wrong use of the word 'farmer' here. You speak correctly in saying a farmer of taxes or a farmer of leases, but when you speak of a man as a farmer of land, it means one who farms land, that is to say, a cultivator. That is the meaning of the word in the English language, but here it means only a person who is a farmer of land. A man who holds land as a cultivator is a farmer, and a farmer in that sense of the word is not a tenure-holder.

"But apart from that objection which is a mere matter of language, I think the amendment ought not to be accepted as it is unnecessary."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I cannot support the amendment. No doubt it is right in principle, but the principle is so firmly established that nobody can question it. It was laid down by the High Court so far back as 1864, and it was confirmed by the Judicial Committee of the Privy Council in the case of Messrs. Jardine, Skinner & Co. in 1878. Consequently it seems to be absolutely unnecessary to accept this amendment. Besides, if Hon'ble Members will compare it with section 22 of the Bengal Tenancy Act, they will find that the two are identical, with this difference only that the Hon'ble Member has not incorporated the Explanation to that section: 'A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder or by subsequently holding the land in *ijara* or farm.' If we accept the amendment, the question might arise as to what was to happen in the case of a person who had a right of occupancy and subsequently held in *ijara*. I think that section 22, clause (3), might be introduced into the Chota Nagpur Act, but then that is not really necessary having regard to the case-law on the subject."

The Hon'ble BABU CHATURBHOOJ SAHAY said:—"I am afraid I cannot give my vote in favour of the amendment. It is said that there is a provision in the Bengal Tenancy Act, and this salutary provision ought to be put into this Act. This is no reason why we should accept this amendment or incorporate this principle of law into the Chota Nagpur Act. It is admitted that the Chota Nagpur Act is very different in many respects and at present a great many changes are not desirable, and we were told in the Select Committee that it was limited in its scope, and that no new principle should be introduced unless an urgent case was made out. We should not alter the law unnecessarily. The case-law on the subject establishes beyond all possible doubt that a farmer

or *ijaradar* cannot have rights of occupancy in any land comprised within his lease, so whether we borrow this section from the Tenancy Act or not, it is all the same, and it does not affect the well-recognised principle of law that an *ijaradar* cannot acquire rights of occupancy. Therefore, unless we are prepared to borrow or incorporate other sections of the Bengal Tenancy Act, there is no use of adopting this one."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, in reply said:—"Notwithstanding what has been said, I would press my amendment."

The Motion was then put and lost.

New clause.

The Hon'ble MR. SLACKE moved that after clause 3 of the Bill the following be inserted, namely:—

'3A. In section 7 of the said Act, before the words "the last preceding section" the words "the first two paragraphs of" shall be inserted.'

He said:—"By this Bill we have added two new paragraphs to section 6. Previous to that addition there was no reason to alter the wording of section 7 of Act I of 1879, but owing to the addition of these two paragraphs, it has become necessary to insert these words. Unless this be done then the effect will be that contracts can be entered into which in effect will deprive raiyats of the rights conferred on them by the two new paragraphs which the Bill proposes to add to section 6 of the Act. To allow such to occur would be highly inadvisable, and for this reason I would ask the Council to accept this amendment."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I am in some difficulty about this amendment, but I take it, it has been rendered necessary by the addition of two new paragraphs to section 6. Section 7 now says: 'Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat when it contains any express stipulation contrary thereto.' No doubt this was applicable to section 6, to which two new paragraphs have since been added, and the effect of the amendment proposed would be to make the exception in section 7 inapplicable to the new paragraphs. If this is the intention, I do not see any objection to the amendment."

[At this stage, with the leave of the President, the Member in charge conferred with the Hon'ble Dr. Asutosh Mukhopadhyaya on this point, with the result that the latter expressed himself satisfied.]

The Motion was put and agreed to.

Clause 4 (section 10A).

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that for proviso (b) in section 10A, in clause 4 of the Bill, the following be substituted, namely:—

'(b) Nothing in this section shall affect the right to execute a decree for sale of a holding passed, or the terms or conditions of any contract registered, before the first day of January, 1903.'

He said:—"I submit that nothing can be put forward by way of objection with regard to the principle which underlies the provision here. What I submit for the consideration of the Council is, that sub-clause (b) ought to be amended so as to include any decree which has already been passed for sale of a holding. That is my object. The Bill already provides that nothing in this section shall affect the terms or conditions of any contract registered before the first day of January, 1903. Evidently that refers to contracts like simple mortgages which authorise the mortgagee to sell the property. Speaking here of decrees, which have already been passed, it may be said that the provision already made in respect of contracts registered before the 1st January will protect decrees which have been already passed upon mortgages executed

before the 1st of January, 1903; but I submit that, having regard to the provisions of the Registration Act, there are cases in which mortgages are as valid and as good as registered mortgages, provided the value of the mortgage security on land does not exceed Rs. 100. Therefore, it is quite possible to see that there might be decrees already passed, based upon mortgages of Rs. 100 or less, which ought to be protected on the same ground as contracts registered before the 1st January, 1903."

The Hon'ble MR. SLACKE said:—"I have nothing to say against the proposal."

The Motion was put and agreed to.

Clause 4 (section 10B).

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that subsection (2) in section 10B in clause 4 of the Bill be struck out. He said:—

"I submit that section 10B gives no right of transfer to a tenant except a very limited right and for a limited period, namely, that a tenant has no right to transfer his holding or tenure except this, that he may lease or mortgage for a term not exceeding five years. But that limited right under this section is made subject to the consent in writing of the zamindar. If the sub-clause (2) be allowed to remain as it is, the result will be that this right to transfer will be practically *nil*. In fact, it will be almost impossible to get the written consent of the landlord. The amendment will not prejudice the landlord, because under the law the arrears of rent has been made the first charge; but if this clause is allowed to stand, it will deprive the tenant of the benefit which this section is intended to give."

The Hon'ble MR. SLACKE said:—"I am unable, Sir, to support this amendment. In the first place, the inability which the learned and hon'ble Member who moved the amendment considers would attach to the raiyat if this subsection be retained will not in practice exist. The right of a raiyat to transfer his holding or part of it is, at present, not binding on the landlord unless the latter's consent to the same is obtained. In spite, however, of this, numerous transfers are now made, and thus it will be seen that the raiyat will be in no way penalized should this sub-section be retained. Furthermore, I am unable to understand why an arrangement made between two persons should be binding on a third party who has had no cognizance of it, and when no custom can be pleaded in support."

The Hon'ble BABU CHATURBHOOJ SAHAY said:—"I submit, Sir, that the amendment is not necessary, and the absence of the landlord's consent in writing will not debar the raiyat from transferring his right in his holding for a limited period. One raiyat may transfer his holding to another, but it is not necessary that the landlord should be bound to accept it. The transfer between raiyats *inter se* is one thing, and its acceptance by the *malik* is another; but the absence of the *malik's* consent would not in any way interfere with the transfer of the holding to another raiyat at all. There are various reasons why the *malik* may object to recognise the transfer. The holding itself may not be transferable; but when one raiyat chooses to transfer to another, it does not concern him to inquire into the question at all as to whether the tenure is saleable or not; but in order to carry on agricultural pursuits he may transfer, but then it is another thing that the landlord should recognise such transfer. Therefore there may be a transfer, but that transfer will not be binding on the landlord unless his consent is given."

The Hon'ble BABU KALI PADA GHOSH said:—"I regret I cannot support this amendment. I was unable to follow my hon'ble friend, the mover of this amendment, when he said that if this clause is allowed to stand, the

effect will be that no transfers can be made by a raiyat, unless he gets the previous consent of the landlord. The section as it stands does not lay down such a thing. It simply lays down that no transfer by a raiyat of his holding shall be binding on the landlord, unless he has obtained the landlord's consent in writing. It is one thing to make it binding on the landlord, and it is another thing to allow the raiyat to transfer his holding. Sub-clause (3) is as follows:—

‘No transfer in contravention of sub-section (1) or sub-section (2) shall be registered or shall be in any way recognised or acted upon by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.’

“Now if this was allowed to stand, what my hon'ble friend apprehends might happen, but I understand sub-clause (3) is to be amended in the next motion by striking out the words ‘or sub-section (2).’ I do not think it can be contended that a raiyat in making a transfer would be put to the necessity of obtaining his landlord's consent, but the only effect will be that unless it is made with the landlord's consent, it will not be binding upon him. My hon'ble friend was contemplating the case in which he said that the occupancy rights would be sold, and the rent would be the first charge; but he lost sight of the fact that these mortgages and leases can be granted also in non-occupancy holdings. There also the remedy is by ejectment. The landlord cannot avoid this lease or this mortgage unless he makes the lessees or mortgagees parties, and that would certainly bring in an obligation which it would be next to impossible for a landlord to comply with. I do not think that this sub-clause, as it stands, will in any way hamper the raiyat in making a transfer.”

The Hon'ble MR. MACPHERSON said:—“This, Sir, seems to be a difficult question. Under the Bengal Tenancy Act, the right of transfer by an occupancy raiyat of his entire holding is left to custom. Under section 88 of the Bengal Tenancy Act the subdivision of a holding is not binding on a landlord unless he gives his consent in writing; but section 85 declares certain powers of sublease.

“Now by this Bill, we are limiting, as several speakers have said, the right to transfer by the raiyat very considerably. Clause (1), sub-clause (1) of section 10B leaves the raiyat a very modified right of transfer. Then sub-clause (2) goes on to say that exercise even of that modified right shall not be binding on the landlord, unless his consent has been obtained in writing. This does not mean that the raiyat will not be able to exercise the modified right of transfer at all without the landlord's consent. It means only that the transferee will take the holding or part of the holding or field at the risk of the landlord's refusal to recognise the transfer. We have gone considerably further than the Tenancy Act in this matter; and if I thought that there was any serious danger to the raiyat that he would be seriously impeded in his agricultural credit, I should vote against the sub-clause under discussion. Take again, for instance, the case of a poor woman making a sub-lease of her lands which she is not able to cultivate, her husband having died. It is very common in such cases for land to be sublet for a term until the children are grown up and able to cultivate. If I thought that such an arrangement would really be impeded by this sub-clause, I should vote against the sub-clause. But we have gone far in sub-clause (1) to modify and limit any rights of transfer which may exist by law or custom in Chota Nagpur at this moment; and I think that the further step taken in sub-clause (2) may be approved subject to re-consideration when with fuller knowledge we again revise the law. I ask myself what grievance the transferor or transferee would have if the landlord refused to recognise the transfer? What could the landlord do? How could he treat the transferee who has been put in possession for the short term of five years defined by sub-clause (1)? Could he treat the transferee as a trespasser, and is there any likelihood of any hardship arising? I think that if the transferee takes care that the rent is paid to the landlord, the landlord will not be able to touch him. In this belief I agree to let the sub-clause stand, and I shall vote against the amendment.”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I entirely agree in the observations of the Hon'ble Member who spoke last. The question raised by this amendment is no doubt one of very great difficulty, but after anxious consideration I have come to the conclusion that it ought not to be accepted. Under the Bengal Tenancy Act the question whether a raiyat is entitled to transfer his holding or not depends upon whether there is a custom of transferability or not. If there is a custom he has the right, otherwise not. It has been said that by section 10B of the Act we are going to restrict the right of transfer, but I submit that this is hardly a correct view to take. This assumes that raiyats and *ijaradars* are entitled to transfer, and of course if they are so entitled, the provisions embodied in section 10B may be correctly described as a restriction on their rights. But, I take it, the truth is that raiyats are not entitled to transfer, although in some places they endeavour to do so. I take it, therefore, that the correct view of section 10B is that it accurately defines the position of the raiyat so far as the question of transfer is concerned; it lays down that he is entitled to transfer under certain circumstances, that is to say, in the first place, he is entitled to lease out his holding, provided the lease is for not more than five years, and in the second place, he is entitled to execute a *bhagut bandha* mortgage, if the period does not exceed five years. If the raiyat does either of these two things, there is no reason why the landlord, behind whose back the transfer takes place, should in any way be bound by the transaction. In fact, the question of the landlord being not bound by the transaction ought not to arise if the transferee is cautious. The question of the landlord being bound only arises if the landlord seeks to eject the transferee, and that contingency can only arise if the rent is not paid. Therefore if the rent is paid in, if the *bhagut bandha* mortgagee is careful to see that the landlord gets his rent, the question of the transaction being binding on the landlord will never arise. On the other hand, if he is not careful to see that the rent is paid, the landlord is entitled to say, 'I am not bound by your transfer, my rent is in arrears, and I am entitled to proceed against the holding.'"

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, in reply said:—"I do not think I should take up the time of the Council by making a long reply, but I would only point out that from the Report of the Select Committee it appears that the wording of this clause has been taken from the Bengal Tenancy Act, section 88. The Select Committee say: 'We have also provided, on the analogy of section 88 of the Bengal Tenancy Act, that no transfer of a raiyat's rights shall be binding on the landlord, unless it is made with his consent in writing.' Well, that section 88 of the Bengal Tenancy Act refers only to the subdivision of the holding. It says: 'A division of a tenure or holding or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.' This section 10B goes a great deal beyond the Bengal Tenancy Act in putting restrictions on the raiyat in the transfer of his holding or tenures. Some of the Hon'ble Members have said what will be the effect of this section and how the transferee will be hampered and how the tenant will be hampered. It appears that this modified right of transfer is given to the tenant to enable him to raise a loan in a time of emergency, but I submit that when it is found that it is subject to the landlord's consent, the tenant or raiyat will not be able to raise the money, as no *mahajan* will give a loan and take a mortgage when he finds that it is subject to the landlord's consent. I humbly submit that this section will defeat the object of the Legislature, that object being to enable poor tenants to raise a loan on a *bhagut bandha* mortgage, limited to a period of five years. Therefore I submit that, in spite of the weight of authority being against me, I feel that it will be disastrous to allow this section to remain as it stands, as it will in effect prejudice the tenant's rights."

The Motion was then put and lost.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, also moved that the words "or sub-section (2)," in sub-section (3) of section 10B, in clause 4 of the Bill, be struck out.

The Hon'ble MR. SLACKE said:—"I support this amendment, Sir, for it is the same as the one that stands against my name in item 19 of the List of Business."

The Motion was put and agreed to.

The Hon'ble MR. SLACKE, by leave of the Council, withdrew the following motion, of which he had given notice, namely:—

"That the words 'or sub-section (2),' in sub-section (3) of section 10B, in clause 4 of the Bill, be struck out."

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that the word "criminal," in sub-section (3) of section 10B, in clause 4 of the Bill, be struck out. He said:—

"I submit that although a document or deed be not stamped, it may be admissible in certain criminal cases which are set forth in the Stamp Act. If I remember rightly, although such documents are not admissible in certain Courts, they may be admissible in criminal cases. Therefore I submit that the Council should accept this amendment."

The Hon'ble MR. SLACKE said:—"I strongly oppose this amendment. The result, Sir, of accepting the amendment in question would be to frustrate the object for which section 10B has been framed. If such transfers are to be recognised or acted upon by Criminal Courts, then it will be perfectly clear to any one who has had experience of criminal law that persons can be maintained in possession of lands beyond the periods laid down in this section. I would further add that the word now objected to was inserted in the sub-clause on the advice of Mr. F. B. Taylor, who for many years was Judicial Commissioner of Chota Nagpur, and was eventually a Judge of the High Court. For these reasons, Sir, I would ask that this amendment may be negatived."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"I beg to strongly oppose the amendment of my hon'ble and learned friend. With reference to this, Sir, I beg to submit that no question of admissibility arises here. Under the Bill as it stands certain transfers shall not be recognised or acted upon."

"Clause (3) of section 10B says:—

'No transfer in contravention of sub-section (1) or sub-section (2) shall be registered, or shall in any way be acted upon by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.'

"Section 33 of the Stamp Act does not touch the question of recognition of a transfer or of its being acted upon. Section 33 says:—

'(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable, in his opinion, with duty is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

'(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
 - (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- '(3) For the purposes of this section, in cases of doubt,—
- (a) the Governor General in Council may determine what offices shall be deemed to be public offices; and
 - (b) the Local Government may determine who shall be deemed to be persons in charge of public offices.'

"This section would not allow an unstamped document to be let in evidence in proceedings of a *quasi-civil* nature under Chapters XII and XXXVI. If Criminal Courts be struck out from the category of Courts which should not recognise such transfers, it would be open to Magistrates to recognise these documents even in cases which are of a *quasi-civil* nature, and therefore it would be dangerous to allow the amendment proposed by my hon'ble and learned friend."

The Hon'ble MR. PUGH said:—"With reference to this amendment, I feel the difficulty which has occurred to the hon'ble mover. I think at the same time that the amendment will go too far, because in Criminal Courts we have not only the trial of criminal offences, but we have also cases with regard to possession, cases particularly relating to land, and it will never do to have this clause amended in this way. At the same time I would suggest to my hon'ble friend, the Member in charge of the Bill, that this section does at present go too far. Now as regards such an instrument not being recognised or acted upon by a Criminal Court, supposing the question turns upon a charge of murder, or on a charge of forgery, or on various other charges, you must recognise it, and act upon it, and rely upon it, but you need not recognise it as valid. Therefore what I would venture to suggest to the Hon'ble Member in charge of the Bill is, that you should alter the wording here by putting in after the word 'recognise' the words 'as valid,' leaving out the words 'or acted upon.' I hope that will also meet the views of my hon'ble and learned friend, the mover."

The Hon'ble MR. SLACKE said:—"I am willing to accept the amendment proposed by the Hon'ble the Advocate-General on the wording of sub-clause (3) of section 10B."

The Hon'ble the PRESIDENT said:—"I think that the amendment proposed by the Hon'ble the Advocate-General amounts to a substantive amendment of the clause, and that it must therefore be separately considered: the proper procedure will be to first take the decision of the Council on the amendment as put forward by the Hon'ble Maulvi Seraj-ul-Islam, Khan Bahadur."

The Motion was then put and lost.

The Hon'ble MR. PUGH, by leave of the Council, moved that in sub-section (3) of section 10B, in clause 4 of the Bill, the words "as valid" be substituted for the words "or acted upon."

The Hon'ble the PRESIDENT said:—"I understand that the Hon'ble Member in charge of the Bill accepts the amendment proposed by the Hon'ble the Advocate-General. Sub-clause (3) will then read:—

'No transfer in contravention of sub-section (1) or sub-section (2) shall be registered or shall in any way be recognised as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.'

The Motion was put and agreed to.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that the following be added to section 10B, in clause 4 of the Bill, namely:—

'(5) Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a raiyat's right in his holding or any portion thereof made *bonâ fide* before the first day of January, 1903.'

He said:—"The Bill provides for giving effect to contracts registered before the 1st of January, 1903. My amendment for a similar protection of decrees passed before that date has just been carried, and my present amendment seeks similar protection for transfers (not otherwise invalid) made *bonâ fide* before the same date. There is no reason why this should not be allowed."

The Hon'ble MR. SLACKE said:—"I would, Sir, accept this amendment."

The Motion was put and agreed to.

Clause 5.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that to section 11, in clause 5 of the Bill, the following be added, namely :—

“(3) The officer referred to in sub-section (1) may award to the landlord such sum as he thinks fit, not exceeding Rs. 25, as compensation, if in his opinion an application made by a tenant under this section is frivolous and vexatious.”

He said :—“You have provided for penalties against zamindars in cases of illegal exaction and for refusal to grant receipts to tenants for payments made by them. In holding the balance evenly, you should provide for a penalty if raiyats resort to frivolous and vexatious complaints against the zamindars. A one-sided legal remedy for a legal wrong is not desirable. I submit that there should be a penalty against raiyats in such cases, and that it should be in the shape of a compensation, the maximum of which should not exceed Rs. 25. That seems to me to be a very equitable provision. Of course, there is a provision in section 182 of the Indian Penal Code, but that would be very much out of the way, and that section makes provision in respect of false informations evidently to the criminal authorities and relates to criminal matters. The Deputy Commissioner should be empowered under some provision like the one proposed, when he finds that any false or vexatious complaint has been brought by a raiyat, to fine him Rs. 2 or Rs. 5, or any sum up to Rs. 25. This would save time and trouble and expense to the parties concerned; otherwise raiyats may be induced or instigated to make false complaints, because if they succeed, well and good, and if they do not succeed, they go scot-free. I submit there is no harm in making a provision of this kind, and urge it upon the consideration of the Hon'ble Member in charge of the Bill and the other Hon'ble Members in Council.”

The Hon'ble MR. SLACKE said :—“This amendment is not one I am prepared to accept. The point is one which was most carefully considered by the Select Committee, who were of opinion that the provisions of section 182 of the Indian Penal Code were quite sufficient to meet any such evil, and I am unable to see any cause to differ from this opinion. To accept this amendment would also be likely to create a scare amongst these aboriginal raiyats, which in my opinion would be injudicious. I would therefore suggest that this amendment might be rejected and that it be left to time to show whether any further safeguard is needed than that which is provided by section 182 of the Indian Penal Code. Not one single zamindar has ever thought it worthwhile to ask that a provision of this kind should be drafted into the Bill. It is clear then that the zamindars themselves do not consider that there is any necessity for a provision of this nature. Under these circumstances, I am unable to advise the Council to accept this amendment.”

The Hon'ble BABU CHATURBHOJ SAHAY said :—“When this matter was being discussed in Select Committee, I was in favour of having a provision like this put in the Bill, so that it might prove a check to evil-minded raiyats against their lodging complaints without any foundation whatever. No doubt, when the Bill was introduced, we heard that the relations between landlord and tenant there were to a certain extent strained. No wonder then that the raiyats might be putting forward frivolous complaints to harass the landlords and put them to trouble as much as possible. It might be that he would get himself exculpated or acquitted, but in the meantime he is put to trouble and annoyance and expense, and so I submit that, when this matter is being reconsidered, it would be better if this amendment were adopted.”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—“I am unable to accept this amendment, and for this reason. Section 11, as it now stands, is a counterpart of section 75 of the Bengal Tenancy Act, which also provides a penalty for exactions by landlords from tenants in excess of rent lawfully payable. So far as the tract of country to which the Bengal Tenancy Act is applicable is concerned, no one has ever suggested that tenants are in the habit of laying false charges for the purpose of harassing landlords, and I believe there is no

foundation for the suggestion that tenants in Chota Nagpur may take to this course. I take it that our duty is to legislate for the actual needs of the society in which we live, and not to anticipate imaginary evils and provide for them."

The Hon'ble BABU KALI PADA GHOSH said:—"If the Hon'ble Members would refer to section 11, which lays down that in certain cases of exaction raiyats 'shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid,' they will find that this is not a new thing which has been inserted: we had it under the old law, but the old law was found inoperative as it stands. Under the old law, the raiyat in such cases was obliged to bring a suit in the Revenue Court, and he could not bring this to the notice of the Court by application, as is now provided in the present Bill. The conditions of Chota Nagpur are such that it is very likely that many vexatious cases might arise and landlords might be harassed, and certainly it might be that there is much force in the arguments in favour of the amendment, but having regard to the different local conditions, I think all those who have local experience are agreed that section 11 should be amended in the way provided for in the Bill. There are a large number of landlords who treat their raiyats exceedingly well, but there are also other classes of landlords in Chota Nagpur who are in the habit of making these extortions from raiyats, and that was considered one of the principal grounds upon which these amendments were made. It was for this reason thought highly desirable to have such a section whereby these raiyats can come to the Court without being obliged to incur the expense of a suit, and therefore we thought it necessary to amend section 11. The original section 11, as it was drafted in the Bill, came to the Select Committee with a maximum penalty of Rs. 500. That was considered too high, and the Select Committee very properly reduced it to Rs. 200. I think, having regard to the requirements of the district, section 11 should be allowed to be amended as provided in the Bill, and I cannot therefore support this amendment."

The Hon'ble MR. MACPHERSON said:—"I think, Sir, that the amendment proposed is a reasonable one, that it is fair to landlords, and that it might be useful to put this power in the hands of Revenue-officers to prevent and punish frivolous and unfounded agitation. For these reasons I shall vote for the amendment."

The Hon'ble MR. PUGH said:—"For my own part I do not think it desirable to encourage people to come forward with these claims for Rs. 25, or whatever the compensation may be. What we have in the Bengal Tenancy Act is, that a tenant in these circumstances has a right to bring a suit.

"You have a provision in the Penal Code which provides for these things. There is section 182, under which a man is liable, and I object also altogether upon principle to make a man doubly liable, under the Penal Code, to a certain penalty and under this Act to a fine of Rs. 25. Therefore upon these grounds I trust that the Council will throw out this amendment."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, in reply said:—"This amendment has been opposed by several Members who, while admitting the correctness of the principle, observed that the provision sought is not urgently required. With regard to that I must say that I feel grievously embarrassed when want of necessity and want of urgency is made the ground of opposition. How can we settle the matter so far as necessity goes? I submit these are matters with regard to which provision would be necessary in Chota Nagpur as well as in other places, because, wherever there are landlords and tenants and the relations of landlords and tenants, the necessity like this would arise. We have, I submit, a provision to the effect that if a landlord extort money from the tenant in an illegal manner, he is liable to a penalty. We have a provision that if a zamindar receives rent from a tenant and does not give a receipt, he is liable to penalty. Then why should not there be a penalty for improper conduct on the part of the tenant? From what has fallen from my learned

friend on my right, who has no doubt very much better experience than myself, necessity like this exists. It is simply a matter of common sense. The person exercising this power will always be a competent officer, and he will not exercise this power until he finds it necessary. Unless there is a check like this, much harm will be done. The Hon'ble Dr. Asutosh Mukhopadhyaya says that complaints have not come to him: he has not heard of complaints like this from zamindars. I say with great submission and great respect that such an argument would be very much like an argument in a circle. We have to judge upon facts, and we already know the conditions of the country that we have to deal with, and in these circumstances I submit that a provision like this is necessary."

The Motion was then put and lost.

Clause 6.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in sub-section (1) of section 12, in clause 6 of the Bill, after the word "rent" the words "or interest due thereon" be inserted. He said:—

"This is a very small amendment, and it obviously brings section 12 into line with section 11. The first paragraph of section 11 says:—

'A landlord who, except under any special enactment for the time being in force, levies from a tenant any money in excess of the rent legally payable with interest thereon or any *rakumata* or predial services, to which he is not legally entitled, shall, on application to the tenant, be liable.'

"Section 12 says:—

'Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord or his agent a receipt signed for the same in a form prescribed by the Local Government from time to time by notification in the Calcutta Gazette.'

"Therefore I submit that the words 'or interest due thereon' ought to be inserted."

The Hon'ble MR. SLACKE said:—"I would, Sir, accept this amendment."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by way of amendment, moved that the words "or both" be inserted after the word "thereon in the above motion." He said:—

"I would support the amendment, but I think there ought to be the words 'or both' added after 'thereon,' so that it would run in this way: 'Every tenant who makes a payment on account of rent or interest thereon or both, etc.' There are many cases in which rent is paid and principal is paid, or there may be cases in which only interest is paid, and again there may be cases in which both are paid."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I am quite willing to accept the suggestion."

The Motion was then put in the amended form and carried.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in clause (a) of sub-section (4) of section 12, in clause 6 of the Bill, for the words "for rent paid by the tenant" the words "as aforesaid" be substituted. He said:—

"This is a purely verbal amendment necessitated by the amendment which has just been carried."

The Hon'ble MR. SLACKE said:—"I have no objection to offer."

The Motion was put and agreed to.

Clause 7.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that the following be added at the end of clause 7 (3) of the Bill, namely:—

“or (c) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.

He said:—“The reason for this amendment is that this proviso finds a place in the Bengal Tenancy Act, section 61, from which it is taken. Clause (a) says that when an under-tenant, raiyat or Mundari khunt-kattidar who is bound to pay money on account of rent has reason to believe, owing to a tender having been refused, or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it or to grant him a receipt for it, he may deposit the money. The next clause is with reference to the case where rent is payable to co-sharers jointly. These are the two cases in which he is allowed to deposit the rent. Now in section 61 of the Bengal Tenancy Act there are four clauses, namely:—

- ‘(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent.’

“Of these clauses, (a), (b) and (c) are covered by section 13, clause 7, sub-clause (3) (a) and (b), of the Bill, but (d) is omitted. I submit that (d) ought to be embodied and inserted after clause (b) of section 13 (3). My reason is that this Bill recognises the right of intervenors. Where a zamindar brings a suit for rent, an intervenor may claim that rent, and a tenant may be in doubt as to whether the rent should be paid to A or B. Therefore I submit that where a tenant has a *bonâ fide* doubt as to whom he should pay the rent to, he ought to be given the option of depositing the money.”

The Hon'ble MR. SLACKE said:—“I am, Sir, unwilling to accept this amendment, since to do so would be violating the principle that guided the Select Committee in dealing with the provisions of the Bill. Nothing exists to show that there is any necessity for accepting this amendment, and should any such fact hereafter arise, it can be promptly dealt with by the issue of a notification extending to Chota Nagpur the appropriate sub-clause of the Bengal Tenancy Act.”

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—“My hon'ble learned friend has no doubt the Bengal Tenancy Act, in justification of the amendment moved by him. But my experience has shown me that in cases of doubtful title, where several persons claim the same right, a deposit by the raiyat always proves infructuous. No doubt he finds different claimants claiming rent from him. He does not know, it is true, who is the party entitled to rent from him. But who is the judge in the question? The tenant is certainly not expected to be so. It is not easy for him to decide. It is a matter for a *forum*. If he deposits his rent in Court on the grounds of *bonâ fide* doubt as to who is entitled to receive the rent, the Court in which the rent is deposited is unable to pay to anybody until the question of title is settled in a Court of Justice. I must, however, notice that there is another ground of justification of my hon'ble friend's movement. It is this. If the raiyat deposit the rent, he can tell the claimants he has already deposited the rent due by him in Court, which might in some cases save him from the botheration of demands by the claimants. But if we weigh the *pros* and *cons*, the scale of reasonableness will preponderate rather in favour of the Bill as it stands than in favour of the amendment moved. I therefore cannot support the amendment.”

The Motion was then put and lost.

Clause 9.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

“That to clause 9 of the Bill the following be added, namely:—

‘In the same section, after the word “rent” the words “(other than the amount deposited)” shall be inserted.’

Clause 10.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that to clause 10 of the Bill the following be added, namely:—

‘In section 17 of the said Act, after the word “rent” the words “or interest thereon” shall be inserted’

He said:—“I need not repeat the reasons urged by me in support of my amendment No. 23 on the list, which has been already carried. They apply equally to this amendment.”

The Hon'ble MR. SLACKE said:—“I would, Sir, accept this amendment.”

The Motion was put and agreed to.

New clause.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that the following be inserted after clause 10 of the Bill, namely:—

‘10A. (1) Before the proviso to section 24 of the said Act the following shall be inserted, namely:—

“Provided that if the Deputy Commissioner, when passing a decree for enhancement, considers that the immediate enforcement of the decree in its full extent would be attended with hardship to the under-tenant or raiyat, he may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.”

‘(2) After the word “Provided,” in the same section, the word “also” shall be inserted.’

He said:—“I submit that this would be for the benefit of the tenant. This has been taken *verbatim* from section 36 of the Bengal Tenancy Act, and I submit that it would be for the benefit of the tenant if such a power were given to the Deputy Commissioner who could, in certain circumstances, direct that there should be a gradual enhancement instead of granting the enhancement at once.”

The Hon'ble MR. SLACKE said:—“For two reasons, Sir, I am not in favour of accepting this amendment. In the first place, it deals with the subject of the enhancement of rent. Admittedly the Act is defective with regard to the safeguards relating to enhancement; but, as I have already pointed out, we cannot, owing to the lack of the requisite data, say what these safeguards should be. *Secondly*, the section of the Act in which the learned and hon'ble Member would wish to include this amendment does, as it stands, enable the Deputy Commissioner to provide for the very object which the Hon'ble Member contemplates by his amendment, for it says that the Deputy Commissioner ‘may otherwise alter or vary the rent for such land as to him may seem fair and reasonable.’

“That being so, it seems to me unwise to tamper with the question of enhancement when confessedly we are not in possession of the requisite data. For these reasons I would ask the Council to reject the amendment.”

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, in reply said:—“I do not think the law, as it stands, covers a case like that. The present section 24 no doubt gives the Deputy Commissioner wide discretionary power to fix whatever rent he thinks fair and reasonable, but I submit that this does

not give power to direct that the enhancement should be gradual. Of course, if the Hon'ble Members think that the law, as it stands, covers the case, I do not think it necessary to go on with this."

The Motion was then put and lost.

Clause 11 (section 28B).

The Hon'ble BABU KALI PADA GHOSH moved that the words "or the holding of an under-raiyat having occupancy rights," and the words "or the holding of an under-raiyat not having occupancy rights," in section 28B (1) in clause 11 of the Bill, be struck out. He said:—

"The expression 'under-raiyat' is to be found nowhere in this Act, nor is it defined in the Act. Section 28B has been copied from the Bengal Tenancy Act, and is a mere reproduction of section 113 of that Act. Of course the section of the Bengal Tenancy Act contains these two expressions, but in this Act this expression will have no meaning and may lead to complications. Therefore, I submit, their retention is not desirable, and they may be struck out."

The Hon'ble MR. SLACKE said:—"I have nothing to urge against this amendment."

The Motion was put and agreed to.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That the words 'or the holding of an under-raiyat having occupancy rights,' in section 28B (1), in clause 11 of the Bill, be struck out.

In doing so, he said:—"I beg leave to withdraw this amendment, as it is fully covered by the amendment which has just been moved and carried."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by leave of the Council, also withdrew the following motion of which he had given notice, namely:—

"That at the end of sub-section (2) of section 28B, in clause 11 of the Bill, the following be added, namely:—

'or from the date of the final decision in any suit, or of any order in any other proceeding, referred to in section 28A, altering the said record-of-rights.'

In doing so, he said:—"I will not press this amendment. I have had the benefit of a discussion with the Hon'ble Member in charge of the Bill, and I have in consequence decided to withdraw it. I accordingly ask permission to withdraw this amendment."

New clause.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That after clause 11 of the Bill, the following be inserted, namely:—

• 11A. In section 29 of the said Act, after the word "raiyat," in both places in which it occurs, the words "or Mundari khunt-kattidar" shall be inserted."

In doing so, he said:—"The Hon'ble Member in charge of the Bill has satisfied me that this amendment, as well as the one which stands in my name and is No. 35 on the agenda, that in section 32A, in clause 14 of the Bill, after the word 'raiyat' the words 'or Mundari khunt-kattidar' be inserted, are not required, and therefore I withdraw them."

Clause 13.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that in section 31, in clause 13 of the Bill, the words "or Sambat" be inserted after the word "Bengali." He said:—

"This is simply a verbal amendment, and it is necessary. So far as I know, there should be no discussion about this matter, as it is identical with an amendment, moved by the Hon'ble Member in charge of the Bill."

The Hon'ble MR. SLACKE said:—"This amendment, Sir, is the same as the one standing against my name in the next item of business, and I would therefore accept it."

The Motion was put and agreed to.

The Hon'ble MR. SLACKE, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That in section 31, in clause 13 of the Bill, the words 'or *Sambat*' be inserted after the word '*Bengali*.'"

Clause 14.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That in section 32A, in clause 14 of the Bill, after the word '*raiya*' the words '*or Mundari khunt-khattidar*' be inserted."

Clause 16.

The Hon'ble MR. SLACKE moved that in section 34 (4), in clause 16 of the Bill, after the word "paid" the words "or tendered" be inserted. He said:—

"The object of this amendment is to prevent a transferee being harassed by his landlord. If the words in question be not added, it will be open to a landlord to refuse to accept payment of the fee, and thereby to restrain the transferee from bringing any rent suit. This power is clearly not one which should be given the landlord, and I would therefore ask that this amendment may be adopted."

The Motion was put and agreed to.

The Hon'ble MR. SLACKE said:—"It is now, Sir, for me to move that after section 34 (4), in clause 16 of the Bill, the following be inserted, namely:—

'(4a) In the case of any such transfer made after the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, if a longer period than one year has elapsed between the date of the transfer and the date of the application for the registration thereof, the transferee or his successor in title shall not be entitled to recover as aforesaid any rent payable as aforesaid for any period longer than one year.

'(4b) In the case of any such transfer made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, if an application for the registration thereof be not made within one year from such commencement, and if a longer period than one year has elapsed between such commencement and the date of the application for registration, the transferee or his successor in title shall not be entitled to recover as aforesaid any rent payable as aforesaid for any period longer than one year.'

"But I have to-day had the advantage of learning the opinion of the Hon'ble Dr. Asutosh Mukhopadhyaya on this amendment, and in lieu of my own wording I would beg to be allowed to substitute the following, which has been drafted by the learned and Hon'ble Member and which embodies the principle I have in view more strongly than what my own draft does, namely:—

'That for sub-section (4) of section 34, in clause 16 of the Bill, the following be substituted, namely:—

"(4) Every application for the registration of a transfer under sub-section (1) must be made, in the case of a transfer which occurred before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, within one year from such commencement, and, in the case of a transfer occurring after such commencement, within one year from the date of the transfer.

"(4a) If application for the registration of any transfer of a tenure or portion thereof is not made, and the registration-fee paid or tendered, as hereinbefore prescribed, the transferee or his successor in title shall not be entitled to recover, by suit or other proceeding, any rent payable to him as the holder of the tenure or portion which may have accrued due between the date of the transfer and the date of the application for registration."

"The object of section 34 (4) is to put pressure on transferees to register their transfers in the *sarishta* of the landlord, by enacting that as long as such registration is not applied for and the requisite fee not tendered, the transferee can bring no rent suit against his tenants. I have never been satisfied with regard to the efficacy of this provision. In the Land Registration Act we know that in spite of the fines which can be inflicted on proprietors of estates for non-registration of transfers, the provisions of that Act are constantly neglected. It is impossible for me to suggest that a landlord should be allowed to fine a transferee of a tenure for neglecting to register the transfer in his *sarishta*, and I have been considering what addition could be made to this sub-clause with a view to strengthen the pressure which it is designed should be brought to bear on the transferee to register the transfer. Obviously, inability to sue the raiyat for arrears of rent is very weak. In a very large number of instances the relations between the transferee and his tenants are harmonious, and consequently no need to sue them would arise. Under such circumstances, it would be useless for the superior landlord to tell the transferee's tenants not to pay, as the transfer not having been registered, they would not be sued. The result would be that the transferee would apply for registration and tender his fee, and bring the requisite suits. Then the tenants would discover that their refusal to pay had resulted in their having to meet the costs of the suits, and that they were at their own expense fighting the superior landlord's battle. Lately it was suggested to me that if provision was made to prevent the transferee recovering by suit any amount of rent that had accrued to him for the period between the date of transfer and the date of application for registration in excess of one year's demand, then transferees would quickly register their transfers in the zamindar's *sarishta*. This suggestion appeared to me to provide for the want I felt, and it has therefore been embodied in the present amendment."

The Hon'ble the PRESIDENT said:—"As I understand the Hon'ble Member in charge of the Bill, the amendment as it stands in the list of agenda is withdrawn, and he desires in its place to move the following:—

"(4) Every application for the registration of a transfer under sub-section (1) must be made, in the case of a transfer which occurred before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, within one year from such commencement, and, in the case of a transfer occurring after such commencement, within one year from the date of the transfer.

"(4a) If application for the registration of any transfer of a tenure or portion thereof is not made, and the registration-fee paid or tendered, as hereinbefore prescribed, the transferee or his successor in title shall not be entitled to recover, by suit or other proceeding, any rent payable to him as the holder of the tenure or portion which may have accrued due between the date of the transfer and the date of the application for registration."

The Hon'ble DR. ASUJOSH MUKHOPADHYAYA said:—"I entirely agree with the observations which have fallen from the Hon'ble Member in charge of the Bill; but, with reference to this amended amendment, I may be permitted to point out that if only a slight verbal change is made, it will be possible for us not only to omit (4a) and (4b), but also to omit the whole of paragraph 4 itself."

The Hon'ble the PRESIDENT said:—"As this is an important amendment and has been sprung upon the Council without time for consideration, I think the best course will be to leave the consideration of this amendment till the end of the day."

The consideration of the revised amendment was postponed till later in the day.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that in sub-section (5) of section 34, in clause 16 of the Bill, the following be inserted before the existing sub-clause (i), namely:—

"to affect the validity of a transfer of any tenure or portion thereof when the name of the transferee or his successor in title has not been registered in the *sarishta* of the zamindar or superior tenant, or the aforesaid registration-fee has not been paid, if such

transfer has been recognized by the zamindar or superior tenant by instituting a suit for the recovery of rent due in respect of the tenure or portion, or if the transfer has taken place in execution of a decree for arrears of rent due in respect of the tenure or portion.

He said:—"When a landlord sues a transferee for rent, though he has not been registered and has not paid the landlord's fee, he virtually admits his position, which admission amounts to a definite recognition of the transfer. The transferee is brought into the same position when the landlord himself brings the property transferred to sale in execution of his own decree for rent. There may be a small question for consideration in this connection. The section under consideration deals with the right of the transferee to recover rents from his tenants, and not with the question of the validity or otherwise of the transfer. Therefore I submit that there ought to be a provision in the law to the effect that if the landlord himself has brought a suit against the transferee for arrears of rent, or if a transfer has taken place at the instance of the superior landlord in execution of a decree for arrears of rent, no objection to the validity of a transfer like this could be taken only upon the ground that it has not been registered, and only upon the ground that the landlord's fee has not been paid. The landlord can always enforce his claim. Under these circumstances, I think the amendment ought to be accepted. Of course there may be a little difference as regards the wording, and if any Hon'ble Member would prefer to say that instead of the words 'to affect the validity of a transfer' the words 'to affect the right of a transferee to recover rent' be substituted, I have no objection. Perhaps my amendment would meet with approval if altered in this way."

The Hon'ble MR. SLACKE said:—"I am not prepared, Sir, to accept this amendment. I am unable to see any need for it or to recognise that it meets any existing want, nor can I see why such persons should be exempted from paying the registration-fee due to the superior landlord."

The Hon'ble BABU KALI PADA GHOSH said:—"I regret I cannot support this amendment, which as it stands presupposes that a landlord, having brought a rent suit against a transferee or having put the tenure to sale and the purchaser having purchased the tenure, admits the transfer, and therefore it is not necessary that this class of transferees should register their names in the landlord's *sarishta* under the new law. I beg to submit that section 34 deals with a particular class of tenures in Chota Nagpur, which are called *jagir* tenures, and the circumstances of these tenures are quite different from permanent tenures in Bengal. The purchaser of these tenures was under the old law obliged to register his name in the *sarishta* of the superior landlord, and I would refer my hon'ble and learned friend to section 35 of the old Act which has been repealed by the present Bill. Section 35 ran thus:—

'The provisions of the last preceding section shall also be applicable to the sale of such under-tenures as are mentioned in section 123, and to the sale of the right and title of any person under section 124.'

"This practically means that the purchasers in sales held under sections 123 and 124 of the Act now being amended were under the necessity of registering their names in the *sarishta* of the superior landlord, and the mere fact that the superior landlord put the property to sale did not exonerate them from registration. So, if we accept my hon'ble friend's amendment, it will have this effect—that the transfers which took place by execution sale before the commencement of the new Act will not be registered in the *sarishta* of the superior landlord, and section 35 of the Act would be made nugatory to that extent."

The Hon'ble MR. PUGH said:—"I would venture to appeal to the hon'ble mover to relieve the Council from further discussing this amendment by withdrawing it. If a man sues the transferee, it is perfectly impossible that he should say afterwards, 'I question the transfer to him,' and if this amendment is at all necessary, then it will follow that a man might sue the transferee first, and then afterwards take objection to the validity of the transfer. I do not think such a thing can ever happen."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, in reply said :—"The High Court has held that the moment a suit is brought for recovery of arrears of rent against a transferee, the suit itself amounts to a recognition of the title of the transferee. However, if there be any difficulty in the acceptance of this amendment, I leave it there."

The Hon'ble the PRESIDENT said :—"As the amendment has not been withdrawn, it will be put to the Council."

The Motion was then put and lost.

Clause 18.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 18 (2) of the Bill for the words "or other person in actual possession of the tenure" the words "or his successor in title" be substituted. He said :—

"I need not give any reason for this amendment other than the one that the words which I propose to substitute better express the meaning than the words in the section."

The Hon'ble MR. SLACKE said :—"I would, Sir, accept this amendment."

The Motion was put and agreed to.

The Hon'ble BABU KALI PADA GHOSH, by leave of the Council, withdrew the following motion of which he had given notice, namely :—

"That in clause 18 (2) of the Bill for the words 'or other person in actual possession of the tenure' the words 'or his successor in title' be substituted."

In doing so, he said :—"I beg, Sir, to withdraw this amendment, which is identical with the one just accepted."

Clause 19.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that in clause (a) of section 36A, in clause 19 of the Bill, for the words "lease of" the words "interest in" be substituted. He said :—

"This clause has been taken from the Sale Law (Act XI of 1859), section 37, clause (4), and the words 'any lease of land' have been the subject of many decisions of the High Court, and the object of the Legislature appears to be to protect from ejectment persons who hold land on which a 'dwelling-house, manufactory or other permanent building has been erected' and so on. I may remind the Council that the Sale Law entirely sets aside and frees purchasers from encumbrances except in these cases. I submit that these words 'interest in' should be substituted for 'lease of.'"

The Hon'ble MR. SLACKE said :—"I am, Sir, unable to adopt this amendment. The point is one which was very carefully considered by the Select Committee, the legal members of which, among whom was the learned Advocate-General, were unanimously of opinion that no such alteration as the one now proposed was required."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said :—"I regret that I have to oppose this amendment. There seems to be a little difference here as regards conveyancing. So far back as 1859, we find that this word was adopted in the Revenue Sale Law, and my hon'ble and learned friend says we should use the words 'interest in' in preference to the words 'lease of.' I submit that the word 'lease,' which means nothing more or less than the letting of land, is more appropriate and at the same time more comprehensive than the word 'interest.' We also find that the word 'lease' has been in fact recognised and accepted and approved ever since it was brought into the Revenue Sale Act (XI of 1859). I do not see any reason for making this particular alteration which has been suggested."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I feel bound to oppose this amendment, as the word 'lease' is a well understood legal expression. Apart from that, the words 'any interest in land' will have a much wider meaning than the words 'any lease of land.' For instance, if my hon'ble friend's amendment is accepted, protection will be extended to mortgages if only within the mortgaged premises there is a dwelling-house. I submit that in such instances we shall be going much further than the Revenue Law or the Bengal Tenancy Act, and I do not think any case has been made out for such extension."

The Hon'ble BABU KALI PADA GHOSH said:—"I also oppose the amendment on the ground put forward by my hon'ble friend."

The Motion was then put and lost.

Clause 20.

The Hon'ble MR. SLACKE moved that in clause 20 of the Bill, for the words "or on account of the refusal of receipts for rent paid," the following be substituted, namely:—

'on account of the illegal exaction of rent or of any unauthorised cess or impost, or on account of the refusal of receipts for rent paid, or,'

He said:—"The reason for this is the same as that which induced the Select Committee to suggest that from this very clause, *viz.*, (2) of section 37 of the Act, should be omitted the words 'or on account of the refusal of receipts for rent paid.' The Bill in the section to be substituted for section 11 of the existing Act provides a new remedy, apart from that by suit, for the prevention of illegal exaction of rent. It is not desirable, therefore, that the remedy by suit, which exists in the present Act, should be retained. In the first place, two remedies are not required, and, in the second place, for an aboriginal, a remedy by suit is practically no remedy at all."

The Hon'ble BABU CHATURBHOJ SAHAY said:—"I would, Sir, support this amendment."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"I would also support this amendment, because the next amendment which stands in my name is identical with this."

The Motion was then put and carried.

The Hon'ble MR. SLACKE also moved that the following be added to clause 20 of the Bill, namely:—

'After the words "extortion of rent," in the same clause, the words "or interest thereon" shall be inserted.'

He said:—"This, Sir, is a consequential amendment and should be accepted, since the amendment against Item No. 23 in the List of Business has been adopted."

The Motion was put and agreed to.

The Hon'ble MR. SLACKE also moved that the following be added to clause 20 of the Bill, namely:—

'After clause (5) of the same section, the following shall be inserted, namely:—

"(5a) all suits to eject a raiyat on account of the use of land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy."

He said:—"Clause 14 of the Bill provides for the insertion in the Act of a section which renders liable to ejectment a raiyat who uses the land of his holding in a manner which renders it unfit for the purposes of the tenancy. Unless the amendment I have just proposed be adopted, there will be no means available to the landlord for enforcing this penalty."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"I support this amendment with pleasure, because it will relieve me from the necessity of moving an amendment on precisely the same lines, which stands against my name."

The Motion was then put and carried.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That the following be added to clause 20 of the Bill, namely:—

'At the end of clause (5) of the same section the following shall be added, namely:—

"or on account of the use of the land by a raiyat in a manner which renders it unfit for the purposes of the tenancy."

New clause.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by leave of the Council, also withdrew the following motion of which he had given notice, namely:—

"That the following be inserted in the Bill, namely:—

'20A. In section 38 of the said Act, after the word "suit" the words "or other proceeding" shall be inserted.'

In doing so, he said:—"Having had the advantage of a consultation with the Hon'ble Member in charge of the Bill, I have come to the conclusion that I should withdraw this amendment."

Clause 22.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that sub-clause (b) in clause 22 of the Bill be struck out. He said:—

"The proviso to section 44, as it stands, runs as follows: 'Provided that if the suit be for recovery of rent at a higher rate than was payable in the previous year, such rent not having been enhanced by the Deputy Commissioner under this Act, the suit shall be instituted within three months from the end of the Bengali or Sambat year, or the month of Jeth of the Fasli or the Wilayati year, on account of which such enhanced rent is claimed.' The application referred to here is an application under section 155 of the Bill, which gives the zamindar the right of realising rent under the certificate procedure. That right is an extraordinary right which is not given anywhere else, but is given here to landlords; but that right is to be exercised in cases where the rent is fixed, where the rent has been found by the Settlement Officer and recorded as rent for which there is no dispute. But here this section, if it is allowed to stand, would permit of a certificate procedure application being made for recovery of rent at a higher rate. I submit that it was never intended by the Legislature that the certificate procedure should be resorted to for realising at an enhanced rate, and therefore I trust this amendment will be accepted."

The Hon'ble MR. SLACKE said:—"I am unable, Sir, to accept the amendment. The retention of the words objected to is necessary in view of the procedure that has been devised in the Bill for the realisation of arrears of rent from the holders of Mundari khunt-kattidari tenures for which a survey and record of rights has been made, and were for this purpose so inserted by the Select Committee."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"I beg to say, Sir, that the amendment moved by my hon'ble and learned friend is necessary, and I say so for the reasons put forward by him."

The Motion was then put and lost.

Clause 26.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, also moved that the following be added to clause 26 of the Bill, namely:—

'The words "and satisfies the Deputy Commissioner that there has been a failure of justice," in the same section, are repealed.'

He said:—"On a reference to section 66 of the Act you find that this section provides that when a suit is decreed *ex-parte* the defendant may within 30 days apply for a rehearing of the appeal on the ground that summons was not served him, and if he can show sufficient cause for non-appearance, then the Court restores the case. But here a condition is attached, and that condition is, that he must show sufficient cause for his previous non-appearance and satisfy the Deputy Commissioner that there has been a failure of justice. That means that the applicant will have to go into the merits of the case and satisfy the Deputy Commissioner that there has been a failure of justice. The first thing that he has to do is to satisfy the Deputy Commissioner if there is sufficient reason for non-appearance, and he must go into the merits of the case to show that there has been a failure of justice. In no Civil Court is it necessary that the parties should go into the merits of the case. If he cannot give sufficient reasons his application is dismissed, and if he satisfies the Court, then a day is fixed and the parties are allowed to go on with the case. I submit that the words 'and satisfies the Deputy Commissioner that there has been a failure of justice' should be struck off."

The Hon'ble MR. SLACKE said:—"The words, Sir, which the learned and Hon'ble Member would wish to strike out are part of the existing law and have been in force for 25 years. Nothing has been alleged to show that they in any way are objectionable in practice or have led to any hardship, and that being so, acting on the principle adopted by the Select Committee, I am averse to the acceptance of this amendment."

The Hon'ble BABU KALI PADA GHOSH said:—"I submit that there has not been much practical difficulty on this point, and I do not therefore consider it a question of great urgency. On that ground I do not support the amendment."

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, in reply said:—"The reasons urged against this amendment are not very forcible, namely, that these words have found a place in the Act for fifteen years and that no inconvenience has resulted. These are not sufficient reasons for not striking these words out. My hon'ble friend on my right says there is no urgency, but if he agrees with me on principle that these words should not be there, I do not see what harm there would be in deleting these words. I submit that the want of urgency is no reason for allowing a provision to remain which is decidedly objectionable."

The Motion was then put and lost.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that the following be inserted in clause 26 of the Bill, namely:—

'For the first paragraph of section 66 of the said Act the following shall be substituted, namely:—

"No appeal shall lie from a judgment against a plaintiff by default for non-appearance; but an appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared, if presented within thirty days from the date of the judgment."

'In the second paragraph of the same section, for the words "But in all such cases" the words "In all cases referred to in the first paragraph of this section" shall be substituted.'

He said:—"An appeal should be allowed against judgment passed *ex-parte*. The Bill does not allow it. The predecessors of the present Code of Civil Procedure did not allow such appeal, but the necessity for it was at last found and such appeal was allowed. This provision in the Civil Procedure Code works well. The remedy to people against whom judgments *ex-parte* are passed find in an appeal a much simpler remedy than otherwise. This would show ample justification for the amendment I move."

The Hon'ble MR. SLACKE said:—"Nothing, Sir, has been shown by the learned and Hon'ble Member of this amendment which can lead anyone to think that the change suggested is one urgently required, and on that ground I would ask that this amendment may not be accepted."

The Hon'ble BABU KALI PADA GHOSH said :—"I sympathise with the object of this amendment, but the scope of this Bill is limited. I understand that unless a matter is very urgent, it cannot be inserted in the present Bill. In this matter it cannot be said that there is any such practical difficulty, and therefore it would be better if it was allowed to stand over till some future time. I cannot support the amendment."

The Motion was then put and lost.

Clause 27.

The Hon'ble BABU KALI PADA GHOSH moved that after sub-clause (1) in clause 27 of the Bill the following be inserted, namely:—

'(2) In the same paragraph, after the words "is subordinate" the words "or by any other person whom the Deputy Commissioner may deem fit" shall be inserted.

'(3) In the second paragraph of the same section, after the word "officer" the words "or other person" shall be inserted.'

He said :—"This is only a simple change. Section 82 of the old Act provides for local inquiries and lays down that such local inquiries can only be made by the Deputy Commissioner himself or by any officer subordinate to him or by any other officer of Government with the consent of the authority to whom such officer is subordinate. This causes great practical difficulty, because Government officers are not always available for such inquiries, and it is highly necessary that persons other than Government officers should be deputed for such inquiries, and that the Deputy Commissioner should have power to depute such persons."

The Hon'ble MR. SLACKE said :—"I would, Sir, support this amendment."

The Motion was put and agreed to.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by leave of the Council withdrew the following motion of which he had given notice, namely:—

"That after sub-clause (1) in clause 27 of the Bill the following be inserted, namely:—

'(2) In the same paragraph, after the words "is subordinate," the words "or by any competent person other than an officer of Government" shall be inserted.'

In doing so, he said :—"The amendment just carried is identical with the one I was to have moved, so I beg leave to withdraw it."

Clause 29.

The Hon'ble MR. SLACKE moved that the words "to be recorded in writing" be inserted after the words "for special reasons" in clause 29 (4) of the Bill." He said:—

"As the clause now stands, the Court may for special reasons extend the period of 30 days mentioned in this section. It can be easily imagined that some Courts may not put their reasons down on paper, and since it is obviously necessary that this should be done for the purpose of removing any doubt on the subject, I propose that these words 'to be recorded in writing' be inserted after the words 'for special reasons.'"

The Hon'ble BABU CHATURBHOOJ SAHAY said :—"I support this amendment."

The Motion was put and agreed to.

New Clauses.

THE Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that after clause 29 of the Bill the following be inserted, namely:—

'29A. After section 94 of the said Act the following shall be inserted, namely:—

"94A. The following rules shall apply in the case of every raiyat ejected from a holding, namely:—

- (a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops, as estimated by the Court executing the decree for ejectment;
- (b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;
- (c) a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;
- (d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable."

He said:—"In moving this amendment I observed that in all matters of new legislation *necessity is the touchstone*. Act X of 1859 and Bengal Act VIII of 1869 had no provision like the one in section 156 of the Bengal Tenancy Act, owing to which, after delivery of possession to landlords of the holdings of raiyats after their ejectment, serious litigation ensued, ending sometimes in breaches of the peace. To obviate such and similar difficulties, the provisions I am seeking became law, forming part of the Bengal Tenancy Act. This provision should be made in the Bill under consideration."

The Hon'ble MR. SLACKE said:—"For two reasons this amendment is not one that I can support. In the first place, there is nothing to show that it deals with a matter that requires an immediate remedy and, *secondly*, the proposal is not one that should be provided for by substantive law, but by rules having the force of law. When the necessity arises for the need of any such rules, the Government already possesses the power to make them."

The Hon'ble BABU KALI PADA GHOSH said:—"This amendment is based upon the interlinked section of the Bengal Tenancy Act, and I should say that no one would be more glad than myself to have this section of the Bengal Tenancy Act, but I was told that we must wait for it till the consolidating Bill is before the Council, and that in the present Bill we can only have such amendments as are urgently necessary. Although I agree with the principle of the amendment, I cannot see the urgency of it. I cannot, therefore, support the amendment."

The Motion was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council withdrew the following motion of which he had given notice, namely:—

"That after clause 29 of the Bill the following be inserted namely:—

'29A. In section 98 of the said Act, after the word "Act," the words "and to all applications under section 155" shall be inserted.'

In doing so, he said:—"I have been assured by my hon'ble friend to my left that if this amendment is accepted it will cause great hardship to raiyats, and therefore, I do not think I should be justified in pressing it."

The Hon'ble BABU KALI PADA GHOSH moved that after clause 29 of the Bill the following be inserted, namely :—

‘29A. For section 105 of the said Act the following shall be substituted, namely :—

“105. No process of execution of any description whatsoever shall be issued on any decree or order passed under this Act unless an application for execution to be made within three years.

(a), the date of the decree or order, or

(b) where there has been an appeal, the date of the final decree or order of the Appellate Court, or

(c) where there has been a review of judgment, the date of the decision passed on the review.”

He said:—“My amendment is connected with section 105 of the Act, which lays down the period of limitation with regard to execution matters. I submit, Your Honour, that this section is not happily worded. It says: ‘No process of execution of any description whatsoever shall be issued on a judgment under this Act unless an application be made within three years from the date of such judgment.’ I am not aware of any law, in this or any other country, under which an ‘execution on judgment’ is taken out. The usual expression is ‘execution of decree’: this is the expression which occurs in the Civil Procedure Code, the Bengal Tenancy Act, and in all other Acts. To bring this section in conformity with the law in other parts of the country, I submit that the word ‘judgment’ be struck out and the words ‘decree or order’ be substituted. Practically we do little more than to make the section conform with the Bengal Tenancy Act on the subject. By this Bill we have given a higher right of appeal. Previously there was no right of appeal after execution proceedings. This Bill provides for that, and it is very desirable that the section should be made to conform with this. Even where appeal is allowed, execution should be taken out within three years of the final decree.”

The Hon'ble MR. SLACKE said:—“I would, Sir, ask that this amendment may be accepted.”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—“I support the amendment, but I have to point out that although we are amending section 105 by this amendment, it will not affect section 103 and other sections in which, I believe, the same expressions are to be found.”

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—“I agree to this amendment, subject to the restriction proposed.”

The Hon'ble the PRESIDENT said:—“I think we may take it as a part of your substantive motion that wherever the word ‘judgment’ occurs in this connection, the words ‘decree or order’ should be substituted, that is to say, if the amendment is carried.”

The Hon'ble BABU KALI PADA GHOSH said:—“Yes, Your Honour.”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA then, by leave of the Council, moved that, in sections 103 and 104 of Bengal Act I of 1879, where process of execution is mentioned as being issued upon a “judgment,” the words “decree or order” should be substituted for the word “judgment.”

Both Motions were put and carried.

Clause 34.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that sub-section (1) of section 130A, in clause 34 of the Bill, be altered as follows, namely:—

“130A. (1) When a tenure or holding has been sold for an arrear of rent due thereon or when any other immoveable property has been sold under

Application to set aside sale of tenure, holding or other immoveable property.

section 129, any person who owns the tenure or holding or the said immoveable property, or who has an interest therein under a title lawfully acquired before the sale, may, at any time within a period of thirty days from the date of the sale, apply to have the sale set aside on his depositing in Court—

(a) for payment to the purchaser, a sum equal to five per centum of the purchase-money, and

- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation and sale, have been received by the decree-holder.

He said:—"The provisions made in section 130A, sub-section (1), ought to include a remedy to the judgment-debtors whose other immoveable property under section 129 have been sold. There is no reason why they should be left without remedy."

The Hon'ble Mr. SLACKE said:—"This amendment, Sir, might be accepted."

The Motion was put and agreed to.

Clause 37.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that in clause 37 (1) of the Bill the words "section 119, section 120 or section 130" be substituted for the words "section 119 or section 120." He said:—

"The principle underlying orders under section 119 and section 120 stand on all-fours with the principle on which an order under section 130 is based. The inquiry under all these sections is of a similar character." Therefore an order under section 130 should not be made appealable to the Commissioner."

The Hon'ble Mr. SLACKE said:—"I have nothing to say against this amendment."

The Hon'ble BABU KALI PADA GHOSH said:—"I have great pleasure in supporting this amendment."

The Motion was put and agreed to.

New clauses.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHABUR, moved that after clause 38 of the Bill the following be inserted, namely:—

'38A. In section 137 of the said Act, after the word "thereto" the words "or a question of a right to enhance or vary the rent of a tenant or a question of the amount of rent annually payable by a tenant," shall be inserted.'

He said:—"This is a very important amendment if I might say so, because if the object of the Legislature is to give a right of appeal, then unless his condition is improved, there will be no appeal. These words are taken from section 153 of the Bengal Tenancy Act. I may appeal to my hon'ble friends here that the only sort of case that comes up for appeal is when there is a dispute about the enhancement or varying of rent. There are few cases where there are questions of detail between the conflicting parties. If these words are not added, there will practically be no appeal. Therefore, I submit, these words which are to be found in section 153 of the Bengal Tenancy Act should be added."

The Hon'ble Mr. SLACKE said:—"I am averse to this amendment, Sir, on the ground that to accept it will be contrary to the principle which guided the Select Committee, inasmuch as there is nothing to show that the proposal meets an existing urgent need."

The Hon'ble Mr. PUGH said:—"I should support this amendment supposing it was with reference to a province like Bengal, but what we have to consider is that Chota Nagpur is not suited for this kind of legislation, and I think it would be better for the circumstances of Chota Nagpur if these questions arising between landlord and tenant were not subject to appeal. That was the conclusion we arrived at in Select Committee, and that I think is the right conclusion, having regard to the circumstances of Chota Nagpur."

The Motion was then put and lost.

Clause 16.

The Hon'ble the PRESIDENT said:—"The Council will remember that Item No. 37 on the List of Business was postponed for further consideration till the end of the day, when the Hon'ble Dr. Asutosh Mukhopadhyaya suggested an amendment which would have the effect of obviating the necessity of the amendment of the Hon'ble Member in charge of the Bill. The Hon'ble Member in charge of the Bill and the Hon'ble the Advocate-General have considered the wording of the suggested amendment, and I understand that the Hon'ble Mr. Slacke is now prepared to bring forward an amendment to the following effect:—

'(4) Every application for the registration of a transfer under sub-section (1) must be made, in the case of a transfer which occurred before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, within one year from such commencement, and, in the case of a transfer occurring after such commencement, within one year from the date of the transfer.

'(4a) If application for the registration of any transfer of a tenure or portion thereof is not made, and the registration fee paid or tendered, as hereinbefore prescribed, the transferee or his successor in title shall not be entitled to recover, by suit or other proceeding, any rent payable to him as the holder of the tenure or portion which may have accrued due between the date of the transfer and the date of the application for registration.' "

The Hon'ble MR. SLACKE said:—"I am willing, Sir, to accept the amendment as now altered by the Hon'ble Dr. Asutosh Mukhopadhyaya. It will take the place of the existing sub-clause (4) in the section."

The Hon'ble BABU KALI PADA GHOSH said:—"I understand that sub-clause (4) will go out. It is understood that this will be substituted for the entire amendment which is down in the name of the Hon'ble Mr. Slacke."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I take it that it will take the place of sub-clauses (4a) and (4b)."

The Hon'ble the PRESIDENT said:—"That being so, sub-clauses (4) and (4a) will now stand as follows:—

'(4) Every application for the registration of a transfer under sub-section (1) must be made, in the case of a transfer which occurred before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, within one year from such commencement, and, in the case of a transfer occurring after such commencement, within one year from the date of the transfer.

'(4a) If application for the registration of any transfer of a tenure or portion thereof is not made, and the registration-fee paid or tendered, as hereinbefore prescribed, the transferee or his successor in title shall not be entitled to recover, by suit or other proceeding, any rent payable to him as the holder of the tenure or portion which may have accrued due between the date of the transfer and the date of the application for registration.'

"These sub-clauses will take the place of sub-clauses (4), (4a) and (4b) of the Hon'ble Mr. Slacke's amendment."

The Motion was put and agreed to.

Clause 39.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That in clause 39 of the Bill after the word 'decree' the words 'or order' be inserted."

The Hon'ble BABU KALI PADA GHOSH moved that after clause 38 of the Bill the following be inserted, namely:—

'38A. Section 138 of the said Act is repealed.'

He said:—"I think it would be better if this item was considered after item 60, which stands in my name, is disposed of."

The Motion was allowed to stand over as requested.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that after clause 38 of the Bill the following be inserted, namely:—

'38B. At the end of section 138 of the said Act the words "or upon any other sufficient ground" shall be added.'

He said:—"This amendment will simply give the Deputy Commissioner wide discretionary powers for granting a review. Here the grounds upon which a review may be admitted are limited: they are limited only to the ground of the discovery of some new evidence or matter. What I propose is to give wider discretionary power to the Deputy Commissioner to re-hear cases where injustice has been done, or for other reason. These words are also to be found in section 623 of the Civil Procedure Code. I submit it will be for the ends of justice if the amendment is accepted."

The Hon'ble MR. SLACKE said:—"I would suggest, Sir, subject to the consent of the Hon'ble Mover, that this amendment may be considered after Item No. 57 in the List of Business has been disposed of, because, if that amendment be accepted, this one must necessarily be abandoned."

The Motion was allowed to stand over as requested.

New clauses.

The Hon'ble BABU KALI PADA GHOSH moved that after clause 40 of the Bill the following be inserted, namely:—

'40A. After section 145 of the said Act the following shall be inserted, namely:—

"145A. (1) The provisions of section 561 of the Code of Civil Procedure shall, so far as applicable, apply to all appeals under this Act.

Application of certain provisions of the Code of Civil Procedure.

"(2) The provisions of the Code of Civil Procedure relating to the amendment of plaints, the amendment of decrees, the substitution of parties, and review of judgment shall, so far as they are not inconsistent with this Act, apply to all suits and proceedings under this Act."

He said:—"The object of the amendment is to introduce some of the provisions of the Civil Procedure Code. In moving this amendment, I do not lose sight of the fact that the present Bill is limited to very urgent matters. The procedure of the Chota Nagpur Rent Act is very defective. Great practical difficulty is experienced in working out the procedure law, and in this connection I would simply read a passage from the report of the Deputy Commissioner of Hazaribagh. He reports in connection with the Bill:—

"I may mention that I have had it argued before me that a Court cannot review its own judgment or order, and in a case when I appointed a Receiver, the legality of my action was called in question."

"I am aware that several suits in the Ranchi Courts have been dismissed on the ground that there is no provision in the law for the substitution of parties after death. This will surprise men who are accustomed to law in other parts of the country. I have, therefore, confined my amendment to this very urgent matter. By the present Bill a second appeal to the High Court is allowed in certain cases, but our Act does not provide for what we call technically 'cross appeals:' that is, when an appeal is filed by one of the parties, the respondent has also a right to appeal on certain portions of the lower Court's judgment. Section 561 provides for this, but great difficulty is experienced, as some of the Judicial Commissioners have held that under the existing law there is no right of cross-appeal. Then there are some other things which I pray for, namely, that the provisions of the Civil Procedure Code relating to the amendment of plaints, the amendment of decrees, the substitution of parties and review of judgment, so far as they are not inconsistent with this Act. These are very necessary matters. There is at present no provision in the Act, and the Courts have refused to correct the patent errors. We shall have great practical difficulty unless this remedy is given. Therefore I submit that the Council should consent to this amendment."

The Hon'ble MR. SLACKE said:—"I am, Sir, wholly in favour of this amendment, which will remedy existing grievances and get rid of certain hardships."

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, said:—"I have much pleasure in supporting this amendment. I have only to point out that it might be as well to add the word 'appeals' after the word "suits" in the above section 145A (2)."

The Hon'ble BABU KALI PADA GHOSH said:—"I accept the suggestion."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I have much pleasure in supporting this amendment, as it covers to some extent the same ground as an amendment which stands in my name. I would suggest that not only the word 'appeals' but also the words 'and addition' be inserted after the word "substitution" in the said section."

The Hon'ble BABU KALI PADA GHOSH said:—"I accept the addition."

The Motion was then put in its amended form and carried.

The Hon'ble BABU KALI PADA GHOSH moved that after clause 38 of the Bill the following be inserted, namely:—

'38A. Section 138 of the said Act is repealed.'

He said:—"There can be no objection to this being carried, because it follows as a sequence. Section 138 provides for review in one case only; and as we have got the general section for review, there is no necessity for this section. The whole covers a part."

The Hon'ble MR. SLACKE said:—"I agree to the proposal of the Hon'ble Mover of the amendment. Item No. 60 having been adopted, it is no longer necessary to retain this section."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That after clause 38 of the Bill the following be inserted, namely:—

'38B. At the end of section 138 of the said Act the words "or upon any other sufficient ground" shall be added.'

In doing so, he said:—"The last two amendments being carried, it is not necessary for my amendment to be put. This is covered by item No. 60."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That after clause 40 of the Bill the following be inserted, namely:—

'40A. After section 145 of the said Act, the following shall be inserted, namely:—

"145A. The provisions of sections 206, 373, 374, 375 and 561, and Chapter XLVII of the Code of Civil Procedure shall apply to suits and appeals under this Act."

Clause 41 (section 151).

The Hon'ble MR. SLACKE moved that the words "such persons" be substituted for the words "such kattidars" in section 151, in clause 41 of the Bill. He said:—

"My reason for this is that the word 'kattidars' is meaningless. Khunt-kattidars would have been the appropriate word, but to prevent repetition, the word 'persons' will be sufficient here."

The Motion was put and agreed to.

Clause 41 (section 152).

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that the words "when granted in respect of land of a village or tola of a village owned by a group of joint Mundari khunt-kattidars," in sub-section (4) of section 152, in clause 41 of the Bill, be struck out. He said:—

"Section 152, clause (4), reads in this way:—

'No lease of a Mundari khunt-kattidars tenancy or any portion thereof shall be valid except a lease of one or other of the following kinds, when granted in respect of land of a village or tola of a village owned by a group of joint Mundari khunt-kattidars, namely:—

'(a) mukarrari leases of uncultivated land when granted to a Mundari or a group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation;

'(b) leases of uncultivated land when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat.'

"Two kinds of leases are here described; the words which I have mentioned, if left in, will lead to the inference that if there is a village not owned by a group of Mundari khunt-kattidars, no lease whatever in such a village can be valid; but as that could never have been intended, I propose that these words be left out."

The Hon'ble MR. SLACKE said:—"I would, Sir, accept this amendment."

The Hon'ble BABU KALI PADA GHOSH said:—"I beg to support the amendment. Unless these words are struck out, very great difficulty will arise, because the section, as it stands, does not provide for power to lease in cases of what we call the individual khunt-kattidars. It is not intended that they should be deprived of the right of giving leases."

The Motion was then put and agreed to.

The Hon'ble BABU KALI PADA GHOSH, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That the words 'when granted in respect of land of a village or tola of a village owned by a group of joint Mundari khunt kattidars,' in sub-section (4) of section 152, in clause 41 of the Bill, be struck out."

In doing so, he said:—"This item is identical with the one that has just been carried."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that to sub-section (4) of section 152, in clause 41 of the Bill, the following be added, namely:—

'(c) raiyati leases of cultivated land which is part of a village or tola of a village not owned by a group of joint Mundari khunt-kattidars;

'(d) raiyati leases of cultivated land in a village owned by a group of joint Mundari khunt-kattidars, when such land is not in the occupation of the group or any member thereof and the lease is granted to a Mundari or a group of Mundari raiyats.'

He said:—"I believe the Hon'ble Member in charge of the Bill is quite in agreement with the principle which underlies the Bill, but he seems to think that the addition is not necessary. I shall therefore explain to the Council the grounds upon which I venture to think that the additional clauses are necessary. Clause (4) of section 152 deals with the validity of leases of khunt-kattidari tenures. Clauses (a) and (b) both deal with the case of leases of uncultivated lands. Clause (a) speaks of the *mukarrari* lease of uncultivated land when granted to a Mundari or group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation. Clause (b) deals with the case of leases of uncultivated lands when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat. No provision therefore is apparently made for leases of cultivated lands. By cultivated lands I mean lands which have been brought under cultivation, but which are not in actual occupation of tenants.

For instance, take the class of cases in which a tenant has brought a jungle into cultivation and then subsequently abandons it. That will not be such land as that covered by clauses (a) and (b). My hon'ble friend the Member in charge of the Bill says that that land may properly be described as uncultivated land, because it is not for the time being cultivated by any body. I submit that uncultivated land properly means land that has never been cultivated; if a land has once been brought under cultivation, and the tenant has simply vacated his holding, it cannot be said that it is uncultivated land. At least that is the way that people understand it."

The Hon'ble MR. SLACKE said:—"The Hon'ble Dr. Asutosh Mukhopadhyaya has given fully the reason which has led me to refuse my support to this amendment, because I hold that the clause, as it stands, provides for this case. You have only three classes of land—cultivated land, uncultivated land and unculturable land. There can be no other kind of land. If a holding is cultivated, it is cultivated land; if it is not under cultivation, it is uncultivated land. Therefore this meets the whole case. If the Council are not of that opinion, then I think that clause (c) of the amendment will require a little alteration so as to make it quite clear that this class of leases cannot be granted to anybody but a Mundari. Otherwise you will let in the *baniyas*, and thereby work a great deal of evil to Mundari khunt-kattidars. I would suggest that the amendment should not be accepted, because the clause, as it stands, amply meets all classes of holdings."

The Hon'ble MR. GUPTA said:—"I do not know whether it would meet the objection of my hon'ble and learned friend Dr. Asutosh Mukhopadhyaya if from the second clause (b) the word 'uncultivated' is taken out and the clause made to run thus: '(b) leases of land, when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat?'"

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Omit the word 'uncultivated' in both clauses (a) and (b)."

The Hon'ble MR. SLACKE said:—"I would not omit it, because it would give facilities to some members of the brotherhood to damage the interests of their weaker brethren. Uncultivated lands are lands in nobody's possession."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"The whole difficulty may be avoided if we adopt the words 'land which has been brought under cultivation but which is not at the time cultivated.'"

The Hon'ble MR. SLACKE said:—"I am perfectly willing to adopt that."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"If you adopt that, I am quite willing to withdraw my amendment."

The Hon'ble the PRESIDENT said:—"The Hon'ble Member desires to withdraw his amendment as it stands at present and substitute the following, namely:—"

"That the following be inserted after sub-section (4) of section 152, in clause 41 of the Bill, namely:—"

'Explanation.—The expression "uncultivated land," as used in this sub-section, includes land which, though formerly cultivated, is not at the time the lease is granted either under cultivation or in the occupation of the lessee for purposes of cultivation.'"

The Motion was put and agreed to.

The Hon'ble BABU KALI PADA GHOSH moved that to sub-section (4) of section 152, in clause 41 of the Bill, the following be added, namely:—

'(c) raiyati leases of cultivated land.'

He said:—"It strikes me that there may be cases which might make it necessary to add this clause to section 152 (4). What I mean is that clause (4) of section 152 which has been amended will certainly cover the cases of joint Mundari khunt-kattidari tenancies, but there will be what we call Mundari khunt-kattidari tenancies which may be held by one individual Mundari, such as the ordinary *jaigirdar* of Chota Nagpur. In these cases the raiyats who cultivate the villages are not all Mundari raiyats; they are people such as Swasis, and many other castes. I think we ought to have the power the amendment gives. Section 152, as it stands, says: 'No lease of a Mundari khunt-kattidari tenancy or any portion shall be valid.' The whole village is Mundari khunt-kattidari tenancy, but no portion of land from there may come under this sub-clause (4), even if that land is in the possession of a non-Mundari raiyat. So I do not think clause (4) of section 152 will cover such a case, but I say so subject to correction by the Hon'ble Member in charge of the Bill. If section 152 covers such cases, I will withdraw my amendment, but if it does not, I hope the matter will be carefully considered, because there are many villages in Chota Nagpur in which there are a very large portion of non-Mundari raiyats. I submit that the clause proposed by me should be inserted in the Bill, because, unless the meaning is very, very clear, much practical difficulty will be experienced."

The Hon'ble MR. SLACKE said:—"I am unable to accept the amendment. Everything that has come to our notice shews that there is great danger in a non-Mundari having anything to do permanently with land in a Mundari khunt-kattidari tenancy. I submit that there is no hardship or difficulty at present, but if in the future anything should transpire to shew that there is such hardship, it can be remedied when we again deal with this matter in a few years."

The Hon'ble BABU KALI PADA GHOSH in reply said:—"On hearing what the Hon'ble Member in charge of the Bill has stated, I desire to withdraw this amendment."

The Motion was then, by leave of the Council, withdrawn.

The Hon'ble MR. SLACKE moved that at the end of section 152, in clause 41 of the Bill, the following be added, namely:—

'(7) Nothing in the foregoing sub-sections shall affect any sale, or, except as declared in the proviso to sub-section (1), any mortgage, or any lease, made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903.'

He said:—"This is merely a protective amendment designed to protect rights that have already accrued, and therefore will, I trust, be approved by the Council."

The Hon'ble BABU KALI PADA GHOSH said:—"I have pleasure in supporting this amendment. In sections 10A and 10B some such provision has been made, and it is therefore necessary that this amendment should be put in under section 152. This provision regarding Mundari khunt-kattidari being a new insertion in the Bill, it might cause some misapprehension in the minds of people, and it is therefore very desirable that the matter should be as clear as possible."

The Hon'ble BABU CHATURBHOJ SAHAY said:—"I support this amendment because it is in keeping with the transfer of occupancy holdings and other transfers. So the principle which underlies this amendment has already been recognised by us in the foregoing part of the Bill."

The Motion was then put and carried.

Clause 41 (section 153).

The Hon'ble BABU KALI PADA GHOSH moved that in section 153, in clause 41 of the Bill, before the words "no suit" the words "if the tenancy was, before such possession was obtained, entered as a Mundari khunt-kattidari tenancy in a

record-of-rights finally published under section 103A, sub-section (2), of the Bengal Tenancy Act, 1885," be inserted. He said:—

"I submit that this insertion is absolutely necessary, and for these reasons: section 153 provides that:—

"If any person, after the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, obtains possession of a Mundari khunt-kattidari tenancy, or any portion thereof, in contravention of the provisions of section 152, the Deputy Commissioner may eject him therefrom; and no suit shall be maintainable in any Court in respect of such ejectment; but an appeal shall lie to the Commissioner, if presented within three months from the date of the ejectment, and his decision shall be final."

"This ejectment will certainly be in a summary procedure. What I submit is that before the publication of the record-of-rights there will be nothing to shew what tenancy is a Mundari khunt-kattidari tenancy, and a man might not know that he was dealing with a Mundari khunt-kattidari tenancy; and he might purchase such a tenancy, and then if he is summarily ejected by the Deputy Commissioner, and if no right by a civil suit is given, it will be a very great hardship. After the preparation and publication of the record-of-rights there will be a safe guide for people to know what is a Mundari khunt-kattidari tenancy, and that one should not therefore deal with it, and that if he does so it will be at his own risk. I submit that before the preparation and publication of the record-of-rights there should certainly be the power to contest the summary order for ejectment by a civil suit, and that in this particular case it is absolutely necessary, otherwise this section will lead to great hardship."

The Hon'ble Mr. SLACKE said:—"I am, Sir, in favour of this amendment. If the provisions of the section were not so curtailed, a Deputy Commissioner could put the section into operation with regard to a tenancy for which no record-of-rights had been prepared. In such a case the objection would certainly be made that the tenancy was not a Mundari khunt-kattidari one, and this should not be decided summarily."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I support this amendment, as it is identical with my amendment No. 69 on the List of Business."

The Motion was then put and carried.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

"That in section 153, in clause 41 of the Bill, before the words 'no suit' the words 'if the tenancy is recorded as a Mundari khunt-kattidari tenancy in a record-of-rights finally published under section 103A, sub-section (2), of the Bengal Tenancy Act, 1885,' be inserted."

Clause 41 (section 154).

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motions of which he had given notice, namely:—

"(1) That to section 154, in clause 41 of the Bill, the following be added, namely:—

"(4) The provisions of sections 27 and 28 relating to the abatement of rent shall be applicable to Mundari khunt-kattidari tenancies."

"(2) That in the marginal note to section 154, in clause 41 of the Bill, after the word 'enhancement' the words 'or abatement' be inserted."

"(3) That to section 154, in clause 41 of the Bill, the following be added, namely:—

"(5) When the rent of a Mundari khunt-kattidari tenancy is entered in a record-of-rights as finally published under section 103A, sub-section (2) of the Bengal Tenancy Act, 1885, then, notwithstanding anything contained in the foregoing sub-sections,

'such rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenancy, be enhanced for five years,

“and no such rent shall be reduced within the period aforesaid, save on the ground of alteration in the area of the tenancy or on the ground that the soil of the tenancy has, without the fault of the Mundari khunt-kattidar, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual.

“(6) The said period of five years shall be counted from the date of the final publication of the said record-of-rights.”

Clause 41 (section 155).

The Hon'ble MR. SLACKE moved that after the words “*per annum*” in section 155 (1), in clause 41 of the Bill, the following be inserted, namely:—

“or, in the case of money recoverable under the Cess Act, 1880, with simple interest at twelve and-a-half *per centum per annum*.”

He said:—“The object of this amendment is to prevent anomaly, for unless it is accepted, the landlord would be unable to obtain the amount of interest which, under the Cess Act, he would be entitled to, and which, but for the present Bill as it stands, he would obtain.”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—“I have much pleasure in supporting this amendment.”

The Motion was then put and carried.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, moved that after the figures “33” in sub-section (4) of section 155, in clause 41 of the Bill, the following be inserted, namely:—

“and, when any standing crops are sold in execution of a certificate made under this section, the provisions of section 21 of the said Public Demands Recovery Act, 1895, shall also be applicable as if such crops were immoveable property.”

He said:—“I may remind the Council that standing crops under the present Act are not immoveable property. Under section 21 of the Public Demands Recovery Act, a debtor has a right to deposit the money within thirty days to have the attachment on his immoveable property set aside. That right is not given under this section. I submit it will be a very great hardship if this right is not given to the tenants here. I submit this right should be granted and this section put in in conformity with section 21 of the Public Demands Recovery Act.”

The Hon'ble MR. SLACKE said:—“I am given to understand that standing crops when attached are not sold until after they have been converted into moveable property, that is to say after being cut. They are reaped and threshed, and then they are sold. That is what I have been given to understand is the practice in Chota Nagpur; therefore, there is no object in adopting this amendment. I have, however, nothing to urge against the amendment, save that as there is no practical difficulty felt in Chota Nagpur, I do not see any necessity for it.”

The Hon'ble BABU KALI PADA GHOSH said:—“They are not sold when they are standing in the field, but after they are cut. I submit that there is hardly any necessity for this provision. Even supposing they are sold when they are standing in the field, it may not be practicable to apply the provision to set aside the sale, because by the time the attachment is set aside the crops may be destroyed or damaged. I do not really see how this amendment will have any beneficial effect. I see no reason for the acceptance of this amendment.”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—“I am unable to support this amendment. I cannot believe that my hon'ble friend has foreseen what the consequence will be. He assumes that these crops are sold as standing crops, and he says that the judgment-debtor should be allowed thirty days to deposit the amount for which attachment is taken, so that the judgment-creditor will be bound to allow the standing crops to remain standing for thirty days. I submit that there would be great risk in that. If they cannot be reaped when necessary, they may be damaged or destroyed, and if the judgment-debtor is allowed to gather in his crops, I do not know what the effect may be.”

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, in reply, said:—"I did not quite follow the reasoning of my hon'ble and learned friends who contend that the creditor has every right to cause the sale of these standing crops. I do not know what the practice is in Chota Nagpur, but if standing crop is moveable property, the creditor has every right to attach and sell it. Now what is the effect of that? Supposing a tenant has got some standing crops worth Rs. 100 we will say. The judgment-creditor can attach and sell it, and it may fetch only Rs. 10, the amount for which attachment is taken, and the creditor become the purchaser. The debtor should have the right to deposit the Rs. 10 within thirty days and release his standing crops, otherwise the result will be that the whole of the crops will be taken away. Then my hon'ble and learned friend sees a difficulty about letting the crops stand for thirty days. It is not that they must stand thirty days: he has to pay in the money within thirty days: he can pay it in the next day or the day after or in one week. I submit that you have changed the definition of the words 'standing crops' and made them moveable property, and I consider it nothing but fair and just to give them this privilege."

The Motion was then put and lost.

The Hon'ble MR. SLACKE moved that in proviso (a) to section 155 (4), in clause 41 of the Bill, for the words "two or all" the words "two or more" be substituted.

He said:—"By this clause four means for realising his dues are given the landlord. But as the clause is now worded, the landlord could ask to have one or two, or all, but not three of these means put into force. The amendment is therefore designed to enable the landlord to utilise any or all of the means provided and to remove the restriction I have alluded to."

The Motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in sub-clause (iii) of section 155 (4), in clause 41 of the Bill, the following amendments be made, namely:—

- (1) for the words "a cultivator" substitute the words "such third person;"
- (2) for the words "arrear accrued" substitute the words "certificate has been made;" and
- (3) strike out the words "and that the judgment-debtor has other moveable property or assets from which the sum due can be realised."

He said:—"If clause (3) of the proviso is amended in the way I suggest, it will practically assume a shape in which it will be acceptable to my hon'ble friend to my left, who proposes to add sub-clause (4), and the whole question between us is whether clause (3) is to stand, and there should be an additional fourth sub-clause identical with my amendment, or whether clause (3) is to be amended as I suggest, and there need not be a fourth sub-clause.

"I would appeal to the Hon'ble Member in charge of the Bill, and submit that clause (3), as it stands, can have no possible application at all, and that if the clause is added, as suggested by my hon'ble friend, we shall have left in clause (3) which means nothing and cannot apply to any concrete case. I submit that clause (3) ought to be amended, and it is unnecessary to have clause (4)."

After a short conference with the Hon'ble Member in charge of the Bill, the Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I beg leave to withdraw my amendment."

The Motion was then, by leave of the Council, withdrawn.

The Hon'ble BABU KALI PADA GHOSH moved that after sub-clause (iii) of section 155 (4), in clause 41 of the Bill, the following be inserted, namely:—

"(iv) an objection, by such third person, that the land on which such crops were or are standing is entered in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was made."

He said:—"I submit that the addition of a clause like this is absolutely necessary, otherwise section 155 does not provide for an objection that might be filed by a third party, one who is in no way bound by the certificate made in such a case. There may be tenants in a village who are in no way bound, and they should certainly be given the right of objection. All the objections provided for are (1) objection by a mortgagee holding under a *bhāgut bandha* mortgage, (2) an objection by a lessee holding under a *mukarari* lease, and (3) objection by a cultivator, and these cases will not cover the case I am supposing. So the amendment is absolutely necessary, otherwise a stranger might be prejudiced and his crops attached, and if he comes to the Deputy Commissioner and says that he is not liable under the certificate procedure which has been issued, and that the land the crops on which have been attached is entered in the record-of-rights as being in his possession and that the land does not form part of the tenancy in dispute, the Deputy Commissioner ought to release the crops on his objection. I therefore hope that the Council will see its way to accept this amendment."

The Hon'ble MR. SLACKE said:—"I am, Sir, in favour of this amendment."

The Motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that after sub-section (4) of section 155, in clause 41 of the Bill, the following be inserted, namely:—

'(4A). The provisions of sections 99 to 122 shall, so far as the same may be applicable, apply to proceedings under sub-section (4).'

He said:—"I have consulted the Hon'ble Member in charge of the Bill, and I think it would be safer to include all the sections from 99 to 122. All these sections deal with the issue of processes of execution against moveable property, and it is just doubtful whether they would apply to proceedings under the certificate procedure. In order to remove this doubt, I suggest that these words should be inserted."

The Hon'ble MR. SLACKE said:—"This amendment, as now modified by the learned and Hon'ble Mover, meets with my approval."

The Motion was put and agreed to.

Clause 41 (section 157).

The Hon'ble MR. SLACKE moved that in section 157 (2), in clause 41 of the Bill, for the words "two or all" the words "two or more" be substituted. He said:—

"The reason for this is identically the same as the one I have already given with regard to Item No. 75 in the List of Business."

The Motion was put and agreed to.

The Hon'ble MR. SLACKE also moved that the Secretary be directed to re-number the clauses of the Bill in consecutive order, and to make corresponding alterations in all cross-references thereto.

The Motion was put and agreed to.

The Hon'ble MR. SLACKE also moved that the Bill, as settled in Council, be passed.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT said:—"I have to congratulate the Council on having passed this Bill, which has for so long a time occupied the attention

of the Government, who were anxious to meet to the full the admitted requirements of the tenantry in Chota Nagpur. The acknowledgments of Government are due to the Hon'ble Member from Chota Nagpur, whose local knowledge has been of much help, and still more to the Hon'ble Member in charge of the Bill, without whose ripe experience and intimate acquaintance with details it would have been hard to deal with the Bill. I desire also to acknowledge the care and attention which has been bestowed on the Bill by the Select Committee in preparing their Report, and the careful criticism which has been forthcoming from the independent Members and representatives of various classes of the community. The result is that we have been able to pass this Bill to-day after a very long sitting.

"I have now only to adjourn the Council till this day week, but before doing so I desire to take this opportunity of making the announcement that the sanction of the Government of India and of the Secretary of State for India in Council has been obtained to the introduction of a Bill for the Settlement of Landed Estates in Bengal at as early a date as possible. I was at first of opinion that it would be impossible to introduce this Bill before the 22nd of this month, but matters are now so far advanced that an application will be made at the next meeting of the Council for leave to introduce the Bill, and at that meeting I hope to pass it through another stage and refer it to a Select Committee, so that the Bill itself may be passed during the present month."

The Council was adjourned to Saturday, the 8th August, 1903.

CALCUTTA;

The 1st September, 1903.

A. P. MUDDIMAN,

For Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 9, 1903.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met in the Council Chamber on Saturday, the 8th August, 1903.

Present:

The Hon'ble MR. J. A. BOURDILLON, C.S.I., Acting Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble MR. L. P. PUGH, *Offg.* Advocate-General of Bengal.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. B. L. GUPTA.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble MR. W. A. INGLIS.

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDY, of Cossimbazar.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble MR. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble NAWAB BAHADUR KHWAJA SALIMULLAH, of Dacca.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

NEW MEMBER.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA took his seat in Council.

QUESTIONS AND ANSWERS.

THE BHABUAH SUB-DIVISION OF SHAHABAD.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, in the absence of the Hon'ble BABU CHATURBHOOJ SAHAY asked :—

Will the Government be pleased to state how the matter of providing the Bhabuah Sub-division in the Shahabad district stands with reference to the following points:—

- (a) The recommendations of the Irrigation Commission.
- (b) Orders of the Government of India, if any, on the subject.
- (c) Action taken or proposed to be taken by the Bengal Government in the matter with the result in the former case?

The Hon'ble MR. INGLIS replied :—

“The Answer to the Hon'ble Member's questions is as follows:—

- (a) The report of the Irrigation Commission has not yet been published.
- (b) No orders have been passed by the Government of India on the subject.
- (c) A preliminary survey has been made of the valley and catchment of the river Karmanassa. It has been ascertained that there is a possible site for a reservoir of considerable capacity. It is, however, doubtful whether the reservoir could be made within limits of cost proportionate to the value it would have as a protective work. The question is at present under inquiry.”

PILFERING OF PARCELS ON RAILWAYS.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, asked :—

Has the attention of Government been called to an article in the “Moslem Chronicle” of the 1st August, 1903, headed “Pilfering of parcels on our Railways”?

Will the Government be pleased to direct the Railway Authorities to take steps to redress the grievance so generally complained of?

The Hon'ble MR. INGLIS replied :—

“The Lieutenant-Governor has seen the article referred to, and is aware that complaints of pilfering are frequently made. The Railway Authorities also are keenly alive to the existence of petty thieving and are doing what they can to stop it. In the absence of specific statements which can be verified, no useful action can be taken by Government.”

TUTORS EMPLOYED TO TEACH ENGLISH AND LITERATURE IN COLLEGES IN BENGAL.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA asked :—

- (a) Will the Government be pleased to state the names of the gentlemen employed to teach English language and literature to students in the F.A., B.A., and M.A. classes of *first-grade* and *second-grade* Colleges under the Government of Bengal in the month of July, 1903?

(b) Will the Government be pleased to specify the Colleges in which no Europeans are employed to teach English language and literature in the F.A., B.A., and M.A. classes? In the case of each of the other Colleges, will the Government be pleased to specify how many European and how many Indian Professors are employed to teach English?

(c) Will the Government be pleased to state the names of the Professors or Lecturers in the Presidency College who are employed to teach English and the respective classes taught by them?

The Hon'ble MR. EARLE replied:—

“A statement giving the information asked for is laid on the table.”

The following is the statement referred to:—

(a) The names of the gentlemen employed to teach the English language and English literature to students in the F.A., B.A., and M.A. classes of first-grade and second-grade colleges under the Government of Bengal in the month of July, 1903, are as follow:—

Presidency College.

F.A. ...	...	...	{	Babu Sasi Bhusan Dutt, M.A.
			{	„ Bijoy Gopal Mukherjee, M.A.
			{	„ Aditya Nath Mukherjee, M.A.
B.A. ...	...	...	{	Mr. Jogendra Nath Das Gupta, B.A. (Oxon).
			{	Babu Bijoy Gopal Mukherjee, M.A.
			{	Mr. H. M. Percival, M.A. (Lond.).
M.A. ...	...	...	{	Mr. H. M. Percival, M.A. (Lond.).
			{	„ Jogendra Nath Das Gupta, B.A. (Oxon).

Hoghly College.

F.A., B.A., and M.A. classes ...	{	Babu Jyotish Chandra Banerjee, M.A.
	{	„ Prakas Chandra Mazumdar, M.A.

Dacca College.

F.A., B.A., and M.A. classes ...	{	Mr. Hari Nath De, B.A. (Cantab).
	{	Babu Satyendra Nath Bhadra, M.A.
	{	„ Aswini Kumar Mukherjee, M.A.
	{	„ Jotindra Chandra Guha, M.A.

Rajshahi College.

F.A., B.A., and M.A. classes ...	{	Babu Hem Chandra Sarkar, M.A.
	{	„ Rakhal Das Ghosh, M.A.

Ravenshaw College.

F.A., B.A., and M.A. classes ...	{	Babu Upendra Nath Maitra, M.A.
	{	„ Ram Das Bhattacharya, M.A. (Officiating).

Krishnagar College.

F.A., B.A., and M.A. classes ...	{	Babu Devendra Nath Bose, M.A.
	{	„ Satis Chandra De, M.A.

Sanskrit College.

F.A.	Babu Muralydhara Banerjee, M.A.
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Chittagong College.

F.A.	Babu Khirad Chandra Ray Chowdhury, M.A.
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Patna College.

F.A., B.A., and M.A. classes ...	{	Mr. H. R. James, M.A. (Oxon).
	{	Babu Jadu Nath Sarkar, M.A.

(b) The colleges in which no Europeans are employed to teach the English language and English literature in the F.A., B.A., and M.A. classes are—

Presidency College (at present one Eurasian and four Indian Professors are employed).	Rajshahi College.
Sanskrit College.	Krishnagar „
Hooghly „	Ravenshaw „
	Chittagong „
	Dacca „

In the remaining college, viz., the Patna College, one European and one Indian Professor are employed to teach English.

(c) The list below shows the names of the Professors or Lecturers in the Presidency College who are employed to teach English and the classes taught by them:—

First-year class ...	{ Babu Sasi Bhusan Dutt, M.A. „ Bijoy Gopal Mukherjee, M.A.
Second-year „ ...	{ Babu Bijoy Gopal Mukherjee, M.A. „ Aditya Nath Mukherjee, M.A.
Third-year „ ...	{ Mr. Jogendra Nath Das Gupta, B.A. Babu Bijoy Gopal Mukherjee, M.A. Mr. H. M. Percival, M.A.
Fourth-year „ ...	{ Mr. H. M. Percival, M.A. „ Jogendra Nath Das Gupta, B.A.
Fifth-year „ ...	{ Mr. H. M. Percival, M.A. „ Jogendra Nath Das Gupta, B.A.

THE BENGAL SETTLED ESTATES BILL, 1903.

The Hon'ble MR. BUCKLAND moved for leave to introduce a Bill to facilitate the family settlement of estates in Bengal. He said:—

“The Bill with the Statement of Objects and Reasons was, Sir, under your orders published in the Calcutta Gazette a few weeks ago, so that Hon'ble Members and the public have already had an opportunity of studying it. But I cannot rely upon the formal publication of the Bill as relieving me of the duty of offering an explanatory statement to the Council in making the motion which stands in my name. For some years past the British Indian Association have been applying to Government to legislate for the purpose of maintaining the position of the noble and wealthy families of Bengal, which, under the existing law of the Province, have been liable to fall into decay, owing, among other causes, to the division of estates, and many of which have, in fact, been thereby disintegrated. An incomplete list of the names of 25 such families was prepared without difficulty. The application of the landowners has met with the general approval of successive Lieutenant-Governors of Bengal and their advisers, and after a prolonged correspondence with the Government of India and the Secretary of State (which will show that the subject has been thoroughly discussed), the desirability of undertaking legislation for the family settlement of immoveable and moveable property in Bengal, with the object of preserving old or wealthy families from decay, maintaining their territorial influence and preventing the subdivision of estates of historical and political importance, has been acknowledged by all the authorities, and has found expression in a definite shape in this Bill. In other words, the object of the Bill is to make provision, in special cases approved by Government, for preserving the continuity of noble and influential families whose estates are not protected by the existing law from division on the decease of the proprietor.

“There are several main points to which I desire to invite the attention of the Council. There is perhaps no sentiment more universal in civilized human nature than that of family pride, and it is only a natural consequence of this sentiment that heads of wealthy families should adopt all the measures in their power to found a family (as it is called), to preserve the continuity of the family, and to improve its status. Thus, in some cases in Bengal, and conspicuously so where there is an impartible Raj, the custom of primogeniture has prevailed, and it has been asserted that in former times large

zamindaris could be willed, and descended, when there was no will, to the eldest son exclusively, subject to the rights of other sons to maintenance. The number, however, of cases of indivisibility of property in a family has not been large in Bengal. Speaking generally, Hindu Law makes for the division of estates. That is the character of the local Law of Succession. In cases of intestacy the property must be divided among all the sons. The direct effect of the *Dayabhaga* Law which prevails in Lower Bengal is to partition and break up landed property on the death of an owner among all his sons. Its principle is that every son should have a share of the father's property, whether ancestral or self-acquired: at the same time it allows the holder of the property for the time being to give away the property by gift or otherwise to any one of his sons to the exclusion of the rest, or even to a stranger. The power of making one son the heir is not exercised generally, because it can only be exercised for one life, and in its operation there is no security against alienations either by sale or mortgage. The universal effect is the division of estates.

"The *Mitakshara* Law is somewhat different, but, whenever joint-property is divided, all the sons take equally. Under the *Mitakshara* Law, a father cannot settle property on any one of his sons. Under the *Dayabhaga* Law, a father, as the sole owner of what he has acquired by inheritance or otherwise, has full power to dispose of it by deed or will in favour of his eldest or another son to the exclusion of the remaining sons; but, as was settled more than 30 years ago in the great Tagore Will case (which judgment did not deal with family settlements), he cannot settle it in favour of a son or remoter issue not born at the time of the settlement.

"The result, therefore, is that unless the Legislature intervenes, no Hindu head of a family can make a settlement of his property for the purpose of maintaining or improving the position of the family.

"So, also, the Muhammadans have a law of inheritance, which, it is true, is not peculiar to Bengal, but the effect of which is the universal disintegration of the Muhammadan families. That the Muhammadan community appreciate the ill-effects of the Muhammadan law of inheritance appears from their evasion of the law by the device of a family entail under the name of a religious endowment. This device has been declared by the Privy Council to be invalid. Therefore, unless the Legislature provides a means, the Muhammadans are left without resource. It has therefore been decided to legislate by a permissive measure to give both Muhammadans and Hindus the power, which they have shown themselves desirous of possessing, of making a family settlement of their property. No one can be called upon to take advantage of its provisions against his will. It has been decided also not to insist or rely in any way on primogeniture as the sole condition upon which immoveable property may be settled. The object is to preserve the continuity of the family in the possession of the settled estates, and for this purpose the succession of members of the family other than the eldest son may, within certain limits, properly be recognised.

"And here I would take the opportunity of observing that, though this is a Government measure in one sense, it is not a measure which Government bring forward for their own purposes. It is understood that the principle of the creation and preservation of a body of influential and powerful landed gentry is one which commands the sympathy of the Government of India, and, no doubt, it is to the interest of Government, who are responsible for the maintenance of law and order, to have the native leaders of society attached to them by some form of gratitude. Land-owners all over the world are a loyal and conservative body. This is so even where their tenures are the growth of ancient law and custom. And there are no firmer ties than that of land in India, where many of the tenures are the creation of the Imperial power. On occasions of plague, famine, religious and other disturbances, it is to the heads of the community that Government must turn, and experience shows that their influence can be best maintained, as a rule, by their position as landed proprietors. The heads of families who have a great stake in the country and have, in fact, claimed to be not only important factors in the social economy, but also the real pillars of the State, may be expected, in times of trouble and disturbance, to rally to the side of Government rather than to espouse the cause of its enemies.

“Moreover, wealthy and settled families may be expected to show more consideration to their subordinate tenure-holders and tenants than proprietors who acquire subdivided estates by the partition law or as money-lenders, and look more to making profit out of the land than to the maintenance of position and dignity by possessing it. It is a great satisfaction to Government to see a prosperous and contented peasantry. But what I wish to emphasise is that, though there may be incidental gains which may accrue to the State from the passing of this permissive measure, they are not the objects for which the Bill is being introduced. That the Bill is not a necessity for Government is clear for two reasons. The power of Government is sufficiently strong and established already; on the other hand, there is no ground for making any general charge of discontent or disloyalty against the land-owners of Bengal as necessitating such a measure. The Bill may be useful to Government as an auxiliary support, it is not an indispensable element of strength.

“It has, indeed, been decided by Government that it is impossible to grant in full the application of the Bengal landowners, which originally aimed at obtaining legislation to permit the settlement of estates in perpetuity. It has long been the settled policy of the Statute Law of England to forbid perpetuities. This policy has been accepted in most civilised countries, and is based on the recognition of the principle that economically it is not expedient to fetter the free transfer of property. Departures from this principle can only be supported on the ground of strong political necessity. Exceptions have been made, indeed, from the settled policy of the Government of India and the Secretary of State in favour of certain talukdars of Oudh and in respect of certain ancient zamindaris in the Madras Presidency. But it has been ruled that there is no such necessity for a similar exception to the general policy of the Government of India being granted to the zamindars of Bengal. The law against perpetuities, as it works in England, means that property can be settled for a life or lives in being and 21 years. It has been decided, by slightly varying the English practice, to allow settlements of moveable and immoveable property to be made in Bengal, limited to three generations, not to three lives, and to allow each successive proprietor on succeeding to the property as tenant for life to make a new settlement, should he wish to do so. The right to make a new settlement is to be specifically granted afresh by the Local Government. The rights to be created by or under the family settlement are to prevail over rights derived from family custom or from the general law of succession to which the parties are subject. While a settlement will not have effect beyond the period authorized in the Bill, the opportunity to be given for re-settlement from time to time can be taken if the tenants for life so desire.

“If the Council have borne in mind what I said a few minutes ago about the present requirements of the Hindu and Muhammadan Laws, it will be obvious that this permissive Bill will give the heads of wealthy and influential families in Bengal power to make settlements of property which they cannot at present make. Though such settlements will be of a limited character—not in perpetuity—there will be nothing to prevent the settlement being continued to infinity, if the successive tenants for life are actuated by a becoming family pride and desire to maintain and improve the position of the family according to the provisions of the Bill. In England the settlements of land are strictly limited by law, but they have answered their purpose very well. In the case of almost every great English estate, it is protected by a deed which has no operation beyond the lives of the parties and their children. The main object of the deed is to keep the *corpus* of the property intact in the hands of the eldest son; the subsidiary object is to provide for the maintenance of widows and younger children. The settlement is renewed once in a generation, usually when the eldest son comes of age, or marries. The backbone of the English law of settlement is the rule against perpetuities, to which I have alluded. The question which Government has had to consider has been whether it would be possible to devise a form of settlement which would enable land-owners in Bengal to do for themselves what English land-owners have been doing for many generations. The present Bill is the solution of the question offered. Its provisions I propose to deal with more fully when speaking to the motion for referring the Bill to a Select Committee.

"At present, Sir, I have the honour to move for leave to introduce the Bill to facilitate the family settlement of estates in Bengal."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also applied to the President to suspend the Rules of Business for the purpose of introducing the Bill and referring it to a Select Committee.

The Hon'ble the PRESIDENT having declared the Rules suspended—

The Hon'ble MR. BUCKLAND introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. BUCKLAND also moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Mr. Pugh, the Hon'ble Mr. Gupta, the Hon'ble Mr. Hare, the Hon'ble Maharaja Manindra Chandra Nandy, of Cossimbazar, the Hon'ble Rai Tarini Pershad, Bahadur, the Hon'ble Nawab Bahadur Kwaja Salimullah, of Dacca, the Hon'ble Dr. Asutosh Mukhopadhyaya and the Mover, with instructions to report at the next meeting of the Council. He said:—

"Sir, I said just now that in speaking to this motion I should deal more fully with the provisions of the Bill. The Bill itself is based partly upon the Oudh Settled Estates Act, 1900, so far as regards procedure and powers of alienation, and partly upon the Indian Perpetuities Bill in the form originally submitted by the British Indian Association. Many of the provisions of the Oudh Act which appear superfluous and unsuitable to Bengal have been omitted. The framework of the Bill may be briefly described. After the usual preliminary sections containing the title and definitions, there follow sections 3 to 6 which deal with the manner in which applications are to be made for permission to make a settlement and with the preliminary inquiries which are required before Government passes final orders on an application unless it is summarily rejected. Sections 7 to 16 deal with the provisions of such settlements, and explain how they are to be notified, how they may be modified or revoked and what is to be their effect. Sections 17 to 20 explain certain restrictions of the powers of the tenants for life, while sections 21 and 22 are intended to prevent the defeat of settlements under this measure by the operation of the Revenue Sale Law. Sections 23 and 24 deal with notifications and empower Government to make rules under the Act. Such is, speaking broadly, the framework of the Bill. I now turn to particular sections.

"In section 2 a change in the definition of the word 'estate' has recently been introduced by which that word has been made to include not only immoveable property, but also money and jewellery or other moveable property which should, in the opinion of the Local Government, be treated as heirlooms. Sections 3 and 4 particularly avoid specifying any classes of landholders who may be supposed to be entitled to make settlements and leave the power to grant such a concession entirely within the discretion of the Local Government. Section 5 provides for the issue of notifications for the purpose of giving full and free publicity to important transactions of the nature of such a settlement, so that objections may be filed and considered in time. It is thought that, unless such notifications are published, it will be impossible for Government to ascertain the actual financial position of an estate. Section 6 deals with the rejection or approval of applications after notifications have issued.

"Sections 7 and 8 deal with the order of succession. They are intended to provide for settlement for three generations, i.e., (1) the original settlor, the first tenant for life, (2) the second tenant for life, and (3) the ultimate holder.

It is in this section that the variations from the present Hindu law are introduced, as the terms of the section allow a settlement of property upon one son only and upon a person yet unborn. The same section 7 provides that the settlement shall usually follow the natural course of succession, but a departure from this rule may be sanctioned by the Local Government for sufficient reason. There is nothing in the section which can be construed as allowing an estate to be settled away from the family in any case. From the reports that have already reached my hand it is evident that there is a considerable difference of opinion about this section which will require to be very carefully considered by the Select Committee. By a definition in the Bill the word 'son' includes an adopted son, and the Hindu practice of adoption makes it unlikely that settlers will often die without heirs. But section 8 makes provision for this extreme case by requiring that every settlement should contain provisions for further remainders.

"Under section 9 all incumbrances have to be specified in the settlement. Then provision has to be made for the discharge of incumbrances, for the payment of interest, for the maintenance of the widows, unmarried daughters and relatives (other than the second tenant for life) of the settlor. The same section provides for management in possible cases of minority. No restrictions on management, such as are found in English law, are imposed on an adult tenant for life in view of the strong opinion expressed by the British Indian Association in favour of giving the tenant for life absolute control over the property, subject of course to the provisions of sections 17 and 19, which impose restrictions on alienation and leases by the tenant for life.

"Section 10 provides for additions to the settled estate at any time and for the making of a fresh settlement either by the original settlor or by a subsequent tenant for life. The expression used in the Bill is that the fresh settlement is to be in supersession of the former settlement. It is not quite clear to me whether it is meant that the fresh settlement must contravene the former one, or whether it really means that a continuation or renewal of the former settlement will amount to a fresh settlement. I think this point requires examination.

"Sections 11, 12 and 13 state the formalities which must be observed before a settlement can take effect. It will be observed that section 12, subsection (2), provides that every such deed of settlement should bear a stamp of a value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement, and such stamp-duty is made payable within three years. I am afraid that this provision of the Bill will be regarded as a severe tax by intending settlers, but it has been inserted by the Government of India as the condition on which the privilege of making such settlements is accorded, and it is perfectly clear that, if the condition is not accepted, the Bill, though passed by this Council, will not be approved by the Government of India. There is no alternative between accepting the provision and wrecking the Bill.

"Section 14 contains provisions necessary to prevent the ordinary law of the country or a special custom from operating to defeat settlements made under the Bill. Sections 15 and 16 provide for the revocation and cancelment of a settlement, for it seems proper that it should be possible under due safeguards, such as the sanction of Government, to terminate a settlement at any time.

"Sections 17 to 20 limit the powers of the tenant for life and save the provisions of the Bengal Tenancy Act of 1885. They also contain provisions that, when any portion of an estate is sold or when any premium or fine is taken for a lease, the proceeds shall accrue through official channels to the benefit of the estate, and not to the personal benefit of the tenant for life for the time being. Under the English law, as altered by modern legislation, the life owner of a great estate is usually invested with extensive powers of management: he may, for example, mortgage or sell the estate or part of it, but any capital sums which he may realize by the exercise of those powers are paid over to trustees and held by them on the same trusts as the land. The system works well in England, because it is not difficult to find good trustees. In India it may not be possible to find satisfactory trustees to act without remuneration, so that it is considered necessary, in such matters as the

alienation or lease of a portion of a settled estate, to empower some officer of Government to perform the duties of a trustee.

• “Sections 21 and 22 deal with the recommendations made by the British Indian Association, that a settled estate should be protected from sale under the Revenue Sale Law for default in the payment of land revenue. If it were possible for a tenant for life to default in the payment of the land revenue of an estate and thereby bring an estate to sale, it would be possible for him, unless otherwise prevented, to pocket the surplus proceeds of the sale. It is well known that in most cases there is a handsome surplus of the sale-proceeds after the arrear of Government revenue has been satisfied in a revenue sale. It has, therefore, been provided that such surplus of the sale-proceeds shall accrue to the benefit of the estate, and not to the personal profit of the tenant for life. The latter will, therefore, have no object in voluntarily incurring an arrear of land revenue so as to bring the estate to sale. Section 21 contains also a proviso to guard against the danger of *benami* purchases at sales for arrears of revenue. There is nothing more to be said about sections 23 and 24 of the Bill.

“These observations will, I trust, have put the Council in possession of all the points of the Bill which are worthy of their present notice.”

The Hon'ble BABU KALI PADA GHOSH said:—“I do not think the Bill, so far as its main principle is concerned, can be open to any serious objection. It proposes to ensure permanence and stability of the ancient aristocracy of the Province, and as such it will be generally regarded as a wholesome measure. But it cannot at the same time be denied that the Bill will make a rather violent change in the existing Law of Succession. Under the *Dayabhaga* School of Hindu Law, one can bequeath his properties by a testamentary disposition or make a gift thereof in favour of any individual he chooses, and can even disinherit his own issues, but the gift must be to a person in existence and capable of taking effect at the time of the gift. Section 7 of the Bill, however, shows that a person making a settlement of his estate will be entitled to make such settlements in favour of an unborn son and even the son of an unborn son. The change will appear all the more striking in a case where a family is governed by the *Mitakshara* School of Hindu Law. In such a case a son by his very birth acquires a right to the ancestral property, and the father has not the power to dispose of the property either by will or gift, but under the provisions of the Bill, all the sons except one may be excluded from their legitimate shares in the ancestral property. This is certainly a point deserving of serious consideration, and I do not think it can possibly be intended that the Bill should go so far as to entitle a person to make settlement of a property over which he has no right of disposal under the principles of ordinary law. It seems to me to be desirable that the applicability of the provisions of the Bill should be restricted to large estates, and a pecuniary limit for this purpose should, if possible, be fixed.

“The objectionable feature of the Bill is, however, redeemed to a certain extent by the fact that it is a purely permissive measure, and in its practical application can affect only a few families in the whole of the Province, and that in the case of such as would voluntarily avail themselves of its provisions.

“In matters of detail the Bill is open to objection in several other respects, but I do not think I should be justified in taking up the time of the Council by dwelling upon such questions at this stage, as it will be for the Select Committee to carefully consider all questions of details.”

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—“I heartily thank His Excellency the Viceroy and Your Honour's Government for the measure which has just been introduced by the Hon'ble Member in charge of it. I must say, Sir, that in the new measure I am not personally interested, for I have no property which is either large or of any importance which will in any way personally interest me in the new legislation. I, however, feel rejoiced at this occasion, as when it becomes law it will be a boon to those who are looking forward to it with unsavoury hearts.

“I must also say that if such a measure had ripened into law much earlier, many estates belonging to ancient families would have avoided a shipwreck and continued at least much longer than they did—many estates of considerable value and extent would have avoided change of hands and dismemberment.

What the Hon'ble Member in charge has with Your Honour's permission introduced into the Council is nothing like anything unknown to this country. It owes its origin to long-established usages and customs existing from time immemorial, Regulation XI of 1793 and subsequent Regulations and the decided cases of the highest Courts testifying to the fact of the existence of such usages and customs.

"I would beg to lay before Your Honour a small mistake in the reply sent by the Bhagalpur Landholders' Association. They were under a wrong impression when considering the Bill that it will generally apply to Bengal proper and to the whole Presidency. It applies really to the whole Presidency, and it is all right.

"The provision in the Bill for stamp duty is looked upon by the public as a very harsh measure, and if it be not in the province of the Local Government and the Council to bring down the rate to a more reasonable and fair level, it had better be left alone, and the Bill; I hope, with certain improvements will become law.

"Another matter I beg to notice is that the definition of 'estates' should be made definite and final once for all, subject only as usual to be modified later on if necessary."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Sir,—Under the Rules for the conduct of Legislative Business in this Council, when a motion is made that a Bill be referred to a Select Committee, the principle of the Bill and its general provisions may be discussed; I trust, therefore, I may, without impropriety, submit to the Council, at this stage, some observations on the measure now before us.

"In the first place, I may be permitted to observe that the proposed legislation is of a very exceptional character. It restricts, in some measure, the operation of the rule against perpetuities and of the other wholesome rules which regulate the creation of future interests and the imposition of restraints on the alienation of property. It is too late in the day to question the policy which underlies these rules, and which has stood the test of criticism for centuries. Any legislative measure which purports to interfere with these rules, and which renders it possible that a considerable proportion of the land and capital of the community may be put in fetters, requires to be jealously scrutinised, and, I may say without hesitation, that if the measure now before us had gone much further than it does, had been of unrestricted application, and had not contained the safeguards to be found in the Bill, I should have found it extremely difficult to give it even my qualified support.

"The principle, however, which underlies the Bill, namely, the preservation of the ancient and aristocratic families of this Province from decay, has my unqualified approval, and, in so far as the provisions of the Bill are calculated to attain that object, they have my hearty support. I am afraid, however, that the extent to which by this Bill a concession is made in favour of our landed aristocracy has been misunderstood and to some extent exaggerated. Under the law as it has now been settled by judicial decision, a Hindu is entitled to deal with his property freely if the estate which he creates is, in respect of quality and quantity, such as is recognised in Hindu law and is not opposed to any principles of public policy. As pointed out by the Judicial Committee in the celebrated case of *Tagore vs. Tagore*, a Hindu is entitled to create a succession of life estates, provided the donee is a person in existence at the date of the gift. If, therefore, a landowner has his son and grandson alive, he is entitled to give a life-interest in his properties to his son, and subject to such life-estate, an absolute interest to his grandson. The Bill in substance provides that this may be lawfully done even if the son and the grandson are not in existence.

"To this extent the Bill abrogates the rule that the donee must be in existence and hence capable of taking at the time when the gift is made; to the same extent, also, the Bill makes the rule against perpetuities inapplicable; subject in each instance to the restriction that the donee is selected with reference to the rule of primogeniture. The exception, therefore, which is made to the ordinary law of the land in favour of the aristocracy is of a limited character and ought to meet with our approval. In the absence of any provision in the law similar to those contained in the Bill, our ancient and wealthy families must ultimately be ruined; their estate must in each generation be divided amongst the owners,

and consequently their family prestige and territorial influence considerably diminished.

“The observations I have made are applicable primarily to Hindu families, but they apply with still greater force to the Muhammadan nobility, who live under a law which allows upon the death of a proprietor, not merely his sons, but a number of relations, more or less remote, to partake in the inheritance. Indeed, I may be permitted to observe that so far as these Muhammadan families are concerned, the Bill in one sense comes too late for families in which a number of heirs has already succeeded to the inheritance, and I am happy to find that my views are in entire agreement with those of my hon'ble friend, the Nawab Bahadur of Dacca, when I say that it would have been more satisfactory if some scheme had been devised and embodied in the Bill for vesting the management of the entire estate belonging to such noble Muhammadan families in the eldest male member, who might rightly be regarded as the head of the family, and would be able to maintain its dignity and traditions.

“In the second place, Sir, I may be permitted to point out that the legislation is of a purely permissive character. The provisions of the Bill when passed into law will not be forced upon any of His Majesty's subjects, and it is idle to say that it interferes with the personal law of any member of the community, be he Hindu or Muhammadan. It is entirely optional with a landowner to say whether he will take advantage of the provisions of the Act or not. If he chooses to avail himself of the provisions of the Act, his choice will have to be approved by the Local Government before the settlement can be effected. I hope I am not making too great an assumption when I say that the Local Government may be trusted to exercise the discretion so vested in it fairly and wisely. At any rate, I have seen no substantial reasons advanced as to why such discretion should not be vested in the Local Government.

“I do not, Sir, at this stage propose to detain the Council with an examination of the various provisions of the Bill, but I may be permitted to point out that the details will have to be carefully examined. I may indicate, for instance, one question which will have to be faced, namely, the applicability of the Bill to the great landowners of Bihar, who are governed by the *Mitakshara* law. Other points which will require careful consideration will be, the number of generations to which the settlement should be limited, the provisions which must be adequate and effective for the maintenance of the relations of the settlor, the payment of the stamp duty on the settlement, the effect of this Bill upon existing laws and customs, and last, but not least, the question of the satisfaction of the debts due to creditors, raised in the very important letter from the Secretary to the Trades Association, which was placed in our hands last night. These and various other questions will have to be carefully considered and minutely scrutinised. I may be permitted, therefore, to express the hope that adequate time will be given to the Select Committee for the fullest discussion of every point connected with the Bill, and for the amplest consideration of representations which may be made by persons interested in or affected by a measure of such vital importance. Though I do not profess to be wholly unfamiliar with the subject, it seems to me that adequate time is absolutely necessary for the consideration of the details of this Bill in their various aspects.”

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDY, of Cossimbazar, said:—“I beg fully to support the Hon'ble Dr. Asutosh Mukhopadhyaya. I also thank the Government for the introduction of this Bill, which will be a great boon to noble families of Bengal. There are many matters in this Bill that will require to be carefully considered and discussed, and I beg also that sufficient time be given for this discussion.”

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, said:—“The policy that underlies this measure seems to me to be a sound and wholesome one, and the object of the Bill is to preserve the continuity of influential zamindar families, both Hindu and Muhammadan.

“From the Muhammadan point of view, Sir, I may submit that there seems to be no objection to the principle of the Bill, inasmuch as this principle is recognised in the Muhammadan Law itself and is known as *Wakf Alal Aulad*, or settlement on children. Although unfortunately the Privy Council has given an adverse decision on this point, but a large proportion of Muhammadan lawyers and authorities do not agree with the view of the Privy Council, and

maintain that the Muhammadan law recognises this principle in our Wakf Alal Aulad, or settlement on children. That being so there will be no objection from the Muhammadan point of view to the principle of the Bill. No doubt it appears that the Bill trenches on the doctrine of perpetuity, but under section 2, clause (a), of the Transfer of Property Act, the Muhammadan Law is saved from the law of perpetuity. In other words, a Muhammadan can create a perpetuity even in spite of that law, as he is saved by section 2, clause (d). But, Sir, I quite agree with my hon'ble and learned friend, Dr. Asutosh Mukhopadhyaya, that this Bill does not go far enough, and I venture to urge that, unless the suggestion of the Hon'ble Nawab Bahadur of Dacca is adopted, and if this Bill is passed into law as it stands, it will be almost a dead-letter, because there is hardly one Muhammadan property in Bengal of which one person is the sole proprietor. The Bill provides only for cases in which there are no co-sharers, where a man is the sole proprietor, and therefore Muhammadans will hardly be able to avail themselves of the benefits this measure is designed to confer. I trust that this matter will be carefully considered by the strong Select Committee that has been formed, and I hope they will see their way to giving the Bill a wider scope, for otherwise it will be of no avail to the Muhammadans in the Province.

"There is another point to which I should like to refer, and that is with reference to the stamp duty. The Council are no doubt aware that there is a consensus of opinion against the provisions of section 12 as regards the stamp duty, and there also seems to be objection as to whether the power of revocation ought to be given. I commend these matters to the careful consideration of the Select Committee, and while supporting the Bill submit that it ought to have a wider scope."

The Hon'ble the PRESIDENT said:—"Before putting this motion I desire to advert for one moment to the remarks which have fallen from some Hon'ble Members to the effect that full time should be given for the consideration of this Bill before the Select Committee submit their Report. As Hon'ble Members will see the terms of the motion which I have to put before the Council are that the Bill be referred to a Select Committee with directions to report at the next meeting of the Council, and the present intention is that the next meeting of the Council shall be on Friday next. I see that this announcement has been received with some surprise, and I therefore proceed to explain what the reasons are for calling a meeting of the Council at such an early date.

"In the first place, this Council will shortly disperse and the members of Government who compose it will be leaving Calcutta. During the week that is before us it is the intention of the Member in charge of the Bill to have several meetings of the Select Committee so that the work may be got through as quickly and as thoroughly as possible, and that their Report may be prepared by next Friday. After that if the Report is prepared and presented, my intention is that it should be published for thorough and extensive criticism by all those concerned, and that the Select Committee's Report should not be taken up for consideration till some date at the beginning of the cold weather, so that six weeks or two months will be given for a complete study of that Report. Another reason is that it seems most likely that several important matters will be brought forward in Select Committee, and it may be necessary to refer some of them to the Government of India. If the Select Committee submit their Report next Friday, there will be time to submit those matters to the Government of India and to receive their reply before the next meeting of the Council.

"These are the reasons which have led me to think that this Report should be submitted at such an early date. I desire to add that it is always in the power of the Select Committee to submit a supplementary or additional report after receiving further suggestions."

The Motion was then put and agreed to.

The Council was adjourned to Friday, the 14th August, 1903, at 11 A.M.

CALCUTTA;
The 7th September, 1903.

A. P. MUDDIMAN,
For Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

THE Council met in the Council Chamber on Friday, the 14th August, 1903.

Present:

The Hon'ble MR. J. A. BOURDILLON, C.S.I., Acting Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble MR. L. P. PUGH, *Offg.* Advocate-General of Bengal.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. B. L. GUPTA.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble BABU CHATURBHOOJ SAHAY.

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDY, of Cossimbazar.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble MR. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble NAWAB BAHADUR KHWAJA SALIMULLAH, of Dacca.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.S., F.R.S.E., &c.

QUESTIONS AND ANSWERS.

EXPENDITURE FOR EDUCATIONAL REFORMS.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—

In the Bengal Financial Statement for 1902-1903, under head 22—Education, Rs. 42,42,000 was budgeted, including an Imperial grant of Rs. 10,00,000, for educational reforms.

(a) Will the Government be pleased to furnish details showing in what manner the normal grant of Rs. 32,42,000 and the special grant of Rs. 10,00,000 were actually spent between the 1st April, 1902, and the 31st March, 1903?

(b) Will the Government be pleased to state how much of such expenditure under each head was incurred between the date of the preparation of the Bengal Financial Statement for 1903-1904 and the 31st March, 1903?

(c) Will the Government be pleased to state the substance of any instructions given by the Government of India as to the manner in which the Imperial grant of Rs. 10,00,000 was to be spent, contained in their letters dated the 10th March, 1902, 10th May, 1902, and any other letters on the subject?

(d) Is it true that the Imperial grant of Rs. 10,00,000 was intended to meet, in part, the expenditure which will be the outcome of the recommendations of the Educational Conference held at Simla in September, 1901? If so, will the Government be pleased to state what are the recommendations of the Conference which have been so carried out?

(e) Will the Government be pleased to state what sum out of the ordinary Education grant of Rs. 32,42,000, and what sum out of the Imperial grant of Rs. 10,00,000, included in the Financial Statement of 1902-1903, actually remained unexpended on the 31st March, 1903? Will the Government be pleased to state whether such unexpended balance lapsed to Government?

The Hon'ble MR. EARLE replied :—

“(a) The statistical information asked for in clause (a) of the Hon'ble Member's question is furnished, as far as it is available, in a statement which is laid on the table. The replies to the remaining clauses of the question are as follow :—

“(b) No reply can be given to this question, because, as a matter of fact, the Bengal Financial Statement is under preparation during the month of March: in the current year it was presented on the 27th of that month.

“(c) and (d) (i) The Government of India, in their letter of the 10th March, 1902, referred to by the Hon'ble Member, stated that they had decided to make a recurring grant of Rs. 10,00,000 to Provincial Revenues to meet increased expenditure under Education, while in their letter of the 10th May, 1902, they stated that the grant of ten lakhs was intended to meet, in part, the expenditure which would be the outcome of the recommendations of the Educational Conference held at Simla in September, 1901, and should not be generally utilised for charges falling outside that expenditure. No further instructions have been given with regard to this subject by the Government of India.

“(ii) The Lieutenant-Governor is not able to furnish information showing which of the recommendations of the Educational Conference, held at Simla in 1901, have been carried out, because the proceedings of that Conference are still treated as confidential.

“(e) A sum of Rs. 2,07,774 out of the Provincial grant of Rs. 32,42,000 and a sum of Rs. 2,05,409 out of the Imperial grant of Rs. 10,00,000 remained unexpended on the 31st March, 1903. The unexpended balances lapsed to Government.”

The following is the statement above referred to:—

THE actual expenditure out of the sum of Rs. 42,42,000 provided in the Education Budget was Rs. 38,28,837, as shown below:—

					Rs.
(1)	Direction	...	...	...	68,119
	Inspection	...	...	...	3,44,058
	Government Colleges	...	...	...	5,49,928
		Arts	...	...	2,25,146
		Industrial and technical	...	...	6,45,954
	Government Schools	...	...	...	2,62,874
		High and middle	...	...	5,39,727
		Survey and training	...	...	1,88,345
	Grants-in-aid	...	...	...	1,98,903
	Primary Schools	...	...	...	75,784
	Scholarships	...	...	...	6,229
	Miscellaneous	...	...	...
	Refunds	...	...	...
	Total	...	...	...	31,00,067
(2)	Transferred to District Boards—				
	For the improvement of primary education	...	...	...	3,71,700
	„ additional Sub-Inspectors of Schools	...	...	...	18,900
	„ „ remuneration to teachers in primary	...	...	...	1,16,170
	„ „ schools	...	...	...	52,815
	„ purchase of furniture, etc., in primary schools	...	...	...
	Total	...	...	...	5,59,585
(3)	Transferred to the Public Works Department—				
	For Educational works	...	...	...	1,69,185
	GRAND TOTAL	...	...	...	38,28,837

The information available does not show separately and in detail the items of expenditure of the grant of Rs. 32,42,000 and of the Imperial grant of Rs. 10,00,000. Approximately, the expenditure incurred from the former amounted to Rs. 30,34,246, and that from the latter to Rs. 7,94,591.

REDUCTION OF GOVERNMENT SCHOLARSHIPS.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA asked:—

(a) Will the Government be pleased to state whether the junior Government scholarships awarded upon the results of the Entrance Examination of the Calcutta University and the senior Government scholarships awarded upon the results of the F. A. Examination of the Calcutta University have been reduced both in number and amount? If so, will the Government be pleased to state the extent of such reduction?

(b) Will the Government be pleased to state in what year the amount of each scholarship, which has now been reduced, was originally fixed? Will the Government be pleased to state for how many years the number which is now reduced has continued unchanged?

(c) Will the Government be pleased to state (1) the number of candidates who appeared at the Entrance and F. A. Examinations of the Calcutta University in 1903; (2) the number of junior and senior scholarships awarded upon the results of such examinations and the value of each of such scholarships; (3) the number of candidates who appeared at the Entrance and F. A. Examinations of the Calcutta University in the year in which the number and value of the junior and senior scholarships were fixed at the figures which were in force up to 1902; (4) the number and value of each of such scholarships in the year just mentioned?

(d) Will the Government be pleased to state whether it is true that some of the junior scholarships previously awarded upon the results of the University Entrance Examination have been diverted for the encouragement of students passing by the B and C standards under the new bifurcation scheme? If so,

will the Government be pleased to state the number and value of the scholarships so diverted? Will the Government be pleased to state the number of students who have appeared, or are likely to appear, at the B and C standard examinations and to whom the competition for the diverted scholarships is confined?

(e) Is the Government aware that though the ordinary monthly tuition fee in the Presidency College is Rs. 12, an exception has hitherto been made in the case of students holding junior scholarships who are required to pay only Rs. 10, being the amount of the junior scholarship of the lowest grade? Inasmuch as the value of the junior scholarship of the lowest grade is now reduced from Rs. 10 to Rs. 8, will the Government be pleased to consider whether the tuition fee in the Presidency College should not be reduced from Rs. 10 to Rs. 8 in the case of students holding junior scholarships?

(f) Has the attention of the Government been drawn to paragraphs 71 to 75 of the Report of the Indian Universities Commission relating to the raising of fees in Colleges and the establishment of a "comprehensive and liberal system of scholarships" for the benefit of "poor but really able students"? Will the Government be pleased to consider whether it is advisable to reduce the number and value of the scholarships when the question of raising the fees and establishing a liberal system of scholarships is under the consideration of the Government of India?

(g) Will the Government be pleased to state the reasons for the reduction in the value of the scholarships? Will the Government be pleased to state what is the amount saved annually by such reduction?

The Hon'ble MR. EARLE replied:—

"The statistical information asked for by the Hon'ble Member, under heads (a) to (d) of this question, is given in a statement which is laid on the table. The replies under heads (e), (f) and (g) are as follow:—

"(e)—Government is aware that junior scholars reading in the Presidency College are required to pay Rs. 10 a month as tuition fees. The question of a reduction of these fees, in the case of these scholars, who now receive stipends amounting to Rs. 8 *per mensem* only, was fully considered in the year 1902, but it was decided that no change should be made.

"(f) and (g)—Government is fully aware of the remarks recorded in paragraphs 71 to 75 of the University Commission's report, to which the Hon'ble Member has alluded, and those observations are still under consideration. The reduction in the number and value of the scholarships now under discussion was made at the instance of the Government of India, who, in reviewing the Report on the Progress of Education in India from 1892-93 to 1896-97, observed that the amount spent on junior and senior scholarships in Bengal had exceeded the 2 *per cent.* limit fixed by the Education Commission of 1881. A reduction was, accordingly, effected in the manner above shown, the whole of the amount thus set free (Rs. 14,376 *per annum*) being allotted for the creation of additional primary scholarships."

The following is the statement above referred to:—

(a)—The number of Junior Government Scholarships awarded upon the results of the Entrance Examination of the Calcutta University has been reduced by 18, but no reduction has been made in the number of Senior Government Scholarships awarded upon the results of the F. A. Examination. The values of both the Junior and Senior Scholarships have been reduced, as shown below:—

JUNIOR SCHOLARSHIPS.

1st grade.

6 Scholarships from Rs. 20 to Rs. 16 a month.

2nd grade.

41 Scholarships from Rs. 15 to Rs. 12 a month.

3rd grade.

87 Scholarships from Rs. 10 to Rs. 8 a month.

SENIOR SCHOLARSHIPS.

1st grade.

10 Scholarships from Rs. 25 to Rs. 20 a month.

2nd grade.

40 Scholarships from Rs. 20 to Rs. 16 a month.

(b)—The values and number of these scholarships were originally fixed in the year 1889. No change was made in the number of these scholarships till the year 1902.

(c) (1)—The number of candidates who appeared at the Entrance and F. A. Examinations of the Calcutta University in the year 1903 from schools or colleges in Bengal, exclusive of private candidates, who are ineligible for scholarships, was 5,693 and 3,552, respectively.

(2) The number of Junior Scholarships awarded on the result of the Entrance Examination, exclusive of 3 special scholarships for females and 20 special scholarships for Muhammadans, was 134, while the number of Senior Scholarships awarded on the result of the F. A. Examination, exclusive of 2 special scholarships for females and 20 special scholarships for Muhammadans, was 50. The values of these scholarships were as shown under (a) above. The values of special scholarships for girls are the same as those of scholarships for boys, while the values of the special Senior Scholarships for Muhammadans are Rs. 10, or Rs. 7 a month, respectively (10 at Rs. 10 and 10 at Rs. 7), and those of special Junior Scholarships for Muhammadans are Rs. 7 a month.

(3) The number of candidates who appeared at the Entrance and F. A. Examinations of the Calcutta University in the year 1889 from the schools or colleges in Bengal, exclusive of private candidates, who are not eligible for scholarships, was 4,761 and 2,099, respectively.

(4) In the year 1889 there were 152 Junior Scholarships, exclusive of 3 special scholarships for females and 20 special scholarships for Muhammadans, and 50 Senior Scholarships, exclusive of 2 special scholarships for girls and 20 special scholarships for Muhammadans. The values of the Junior Scholarships were Rs. 20, Rs. 15 and Rs. 10, and those of the Senior Scholarships Rs. 25 and Rs. 20, respectively. The values of the special scholarships for girls were the same as those of scholarships for boys, while those of special scholarships for Muhammadans were as shown in c (2) above.

(d)—Four Junior Scholarships of the first grade, 6 of the second grade, and 8 of the third grade, of the values of Rs. 16, Rs. 12 and Rs. 8, respectively, previously awarded upon the result of the Entrance Examination, have been transferred to students passing by the B and C standards under the new bifurcation scheme. The number of students who appeared at the recent B and C examinations was 84.

PLACING OF GOVERNMENT COLLEGES UNDER INDIAN PROFESSORS.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA asked:—

In paragraph 864 of the Bengal Administration Report for 1901-1902, page 313, it is stated that "the policy of Government of placing certain of the Government Colleges entirely under Indian Professors is being gradually carried out."

(a) Will the Government be pleased to state when the policy referred to in the preceding extract was inaugurated, and specify what steps have been taken to give effect to such policy?

(b) Will the Government be pleased to specify the names of the Government Colleges which are *now entirely* under Indian Professors, and also the names of the Colleges which are intended to be placed under Indian Professors?

(c) Will the Government be pleased to state whether it is intended to include the Presidency College in this category? Will the Government be pleased to state the number of Professors and Lecturers now employed in the Presidency College, and specify how many of these are Indian and how many non-Indian?

(d) In the case of Government Colleges which have already been placed *entirely* under Indian Professors, will the Government be pleased to state whether it is true that such Indian Professors belong, in the majority of instances, to the Provincial Service, whereas the European Professors whom they have replaced belonged generally to the Imperial Service? Will the Government be pleased to state whether it is true that such employment of Indian Professors has resulted in a substantial saving in the cost of management of such Colleges?

(e) Will the Government be pleased to state whether these Indian Professors, who are on a lower grade and draw a lower salary than the European Professors whom they have replaced, are carrying on educational work with equal efficiency?

The Hon'ble MR. EARLE replied:—

“(a) and (b) The policy of placing certain of the Government Colleges entirely under Indian Professors emanated from a recommendation made by the Public Service Commission in the year 1886-87, to the effect that the English agency employed in the Educational Service should be reduced. This recommendation was, however, qualified by an expression of opinion that there should be, in each Presidency, at least one College with a staff of Professors capable of teaching up to the highest European standards, under a European Principal, and that the same object should, as far as possible, be kept in view as regards the smaller Colleges. In pursuance of this policy, while several officers of the Indian Educational Service have always been attached to the Presidency College, and the Dacca and Patna Colleges have each been provided with a Principal and a Professor belonging to that Service, the Colleges at Hooghly, Krishnagar, Rajshahi, Cuttack and Chittagong, and the Sanskrit College, Calcutta, have usually been manned by officers of the Provincial Educational Service, which consists almost entirely of Indian gentlemen. All the last-named Colleges, with the exception of the Hooghly College, are at present entirely officered by Indian Professors. There is no proposal to increase the number of Colleges which are entirely placed under such Professors.

“(c) As shown above, it is not intended to include the Presidency College in the category of those institutions which are to be placed entirely under Indian Professors. There are at present attached to the Presidency College 15 Indian and 7 European Professors. Owing to the absence, on deputation and leave, of four European Professors from this College, there has recently been some temporary reduction in the number of such officers and a corresponding increase in the number of Indian Professors.

“(d) In the case of Government Colleges, which have been placed entirely under Indian Professors, such Professors usually belong to the Provincial Service. According to present arrangements, however, the Dacca College will shortly be entirely manned by Indian Professors, two of whom will be in the Indian Educational Service. Inasmuch as the rate of pay in the Provincial Service is lower than that which prevailed in the former superior graded service, from which the European Professors were previously drawn, the substitution of Indian for European Professors has resulted in a substantial reduction in the cost of maintaining the Colleges under consideration.

“(e) In order to institute the comparison between the educational work of the Indian Professors and that of the European Professors whom they have replaced, as desired by the Hon'ble Member, it would be necessary to call upon the Director of Public Instruction for a full report. The Lieutenant-Governor is not disposed to take this step.”

THE BENGAL SETTLED ESTATES BILL, 1903. . 1

THE Hon'ble MR. BUCKLAND presented the Report of the Select Committee on the Bill to facilitate the family settlement of estates in Bengal.

The Hon'ble the PRESIDENT said:—"Since we last met in this Council Chamber, the Select Committee on the Bill for the family settlement of estates in Bengal have worked with such assiduity that the Hon'ble Mr. Buckland has been able to present to-day their Report on the Bill.

"It will be recollected, however, that on Saturday last I mentioned that there might be certain matters in the Report which might necessitate a reference to the Government of India. I have perused the Report which the Hon'ble Mr. Buckland has just presented, and I find that my expectations have been fulfilled. There are several modifications of importance which the Select Committee have felt themselves obliged to recommend. Therefore, in accordance with the provisions of Rule 7 of the Instructions of the Government of India regarding legislation in Local Councils, I consider it necessary to delay the further progress of this Bill until these matters have been laid before the Government of India and their instructions have been received.

"In these circumstances the Report will not be published at present, and the further consideration of the Bill, to which it refers, will be postponed till some later date."

The Council was adjourned *sine die*.

A. P. MUDDIMAN,

CALCUTTA; }
The 7th September, 1903.

For Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.



The Calcutta Gazette

WEDNESDAY, DECEMBER 23, 1903.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met in the Council Chamber on Saturday, the 12th December, 1903.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. J. T. WOODROFFE, Advocate-General of Bengal.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. W. A. INGLIS.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble MR. R. T. GREER.

The Hon'ble MR. T. K. GHOSE.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble MR. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble NAWAB BAHADUR, KHWAJA SALIMULLAH, of Dacca.

The Hon'ble MAHARAJA SIR RAVANESHWAR PRASHAD SINGH, BAHADUR, K.C.I.E., of Gidhour.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BHUPENDRA NATH BASU, M.A., B.L.

NEW MEMBERS.

The Hon'ble MR. WOODROFFE, the Hon'ble MR. GREER, the Hon'ble MR. T. K. GHOSE, and the Hon'ble BABU BHUPENDRA NATH BASU took their seats in Council.

QUESTIONS AND ANSWERS.

SALARIES OF MINISTERIAL OFFICERS.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, said :—

With reference to the Hon'ble Sir Denzil Ibbetson's announcement that a sum of 3½ lakhs of rupees has been provided in the current year's budget for the improvement of clerical establishments in District Offices (*vide* Gazette of India, 4th April, 1903, Part VI, page 113)—

(a) will the Government be pleased to state what proportion of the grant has been assigned to Bengal; and

(b) will the Government be further pleased to inform the Council whether, in view of the urgent need for reform, there is any likelihood of an early revision of the salaries of ministerial officers in District Offices?

The Hon'ble MR. SHIRRES replied :—

“(a) The reply to the first portion of the Hon'ble Member's inquiry is that no part of the grant in question has been assigned to Bengal.

“(b) With reference to the latter half of his question, I would invite the Hon'ble Member's attention to the remarks of the Hon'ble Mr. H. M. Kisch, Financial Secretary to the Government of Bengal, made in the course of the debate on the budget in the Council held on the 9th April, 1902. He reminded Hon'ble Members who had commented upon the absence of provision from the budget for improving the pay of ministerial officers that the question had never been lost sight of, that Government was in full sympathy with the desire that all grades of ministerial officers should be sufficiently remunerated, and that though financial considerations had prevented the entertainment of wholesale proposals for a simultaneous increase in all Departments of Government, improvements had been effected from time to time in several important offices. In the past few years the position of the lower paid subordinates of the Custom House, of the offices of the Director of Land Records and Agriculture, the Collector of Income-tax, and the Inspector-General of Jails, and of the District Tauzi establishments has been materially improved, and I need only repeat the words of the Hon'ble Mr. Kisch that ‘when the Government is in a flourishing condition and such applications are supported by good grounds, they are almost invariably sanctioned.’

“The question of my hon'ble friend suggests, however, that this Government should take up the question and deal with it as a whole at an early date. Unfortunately it is impossible to make any promise at present; because if anything like a complete revision of establishments were required, involving a large increase of recurring expenditure, the whole of it would have to be met from Provincial Revenues. At present, however, the resources of the Province are undergoing the periodical revision which is a necessary incident of the method of decentralizing Provincial finance which has prevailed up to the present. The object of such a revision is to establish equilibrium between income and expenditure, and it is obvious therefore that no new recurring expenditure on a large scale can be undertaken until sufficient time has elapsed for the revenue to grow so as to give a surplus.”

TRANSFER OF THE CHITTAGONG DIVISION TO ASSAM.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR, asked :—

(a) Has the attention of the Government been called to the persistent reports in the newspapers, especially in the *Pioneer*, to the effect that the transfer of the Chittagong Division to Assam will soon take place?

(b) Has the Government any information on the subject?

(c) If not, will the Government be pleased to obtain information and lay it on the table, regard being had to the strong feeling of opposition which the proposal has evoked from the people of the Chittagong Division?

The Hon'ble Mr. MACPHERSON replied:—

“(a) The attention of Government has been drawn to the reports referred to and to the article in the *Pioneer*. The latter appears to have been based on the Notification which appeared in the Gazette regarding the acquisition of land in Chittagong. That acquisition, however, does not pledge the Government to anything, but would be wise whether Chittagong is transferred to Assam or not.”

“(b) The *Gazette of India* published this morning contains a letter (No. 3678, dated 3rd December, 1903) from the Secretary to the Government of India in the Home Department, in which the proposal to transfer Chittagong to Assam has been mentioned along with other proposals for reducing the size of this province. The Government of India have fully set forth their views; and the public have as much information as this Government has on this matter.

“(c) The matter is now one to be taken up by this Government, an expression of whose views has been invited by the Government of India.”

RAILWAY ACCIDENT NEAR SONEPUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

I beg to call the attention of the Government to the serious railway accident which took place a few months back on the Bengal and North-Western Railway near the Sonepur Station, resulting in loss of life. Is it the case that an inquiry was held? If so, will the Government be pleased to lay on the table the report of the inquiry, or if that be impracticable, the main findings of the report with the reasons thereof? Is it the case, as stated in the *Bengalee* of the 7th October last, that since the accident there has been “a reduction in the number of signallers at the following stations: Bhagwanpur, Kurhani, Turki, Dhole and Ugarpur; that a reduction of signallers at other stations is under contemplation, and that there has been a reduction of hands in other Departments besides the Traffic Department?” If this information is correct, will the Government be pleased to inquire into the reasons for such reduction?

The Hon'ble Mr. INGLIS replied:—

“An inquiry was held. Copies of the reports which give the results of the judicial and departmental inquiries, and copies of the judgments of the Magistrate of the district by whom certain persons were tried, are laid on the table. It has been ascertained that the signallers at the Kurhani, Turki and Ugiarpur stations have been withdrawn during the current half-year with the approval of the Consulting Engineer. Certain signallers were also removed (but were not dismissed) from a number of smaller stations on the Bettiah and Khanwa Ghât branches, where they were being trained for service on new extensions of the Bengal and North-Western Railway system.”

THE BENGAL AND NORTH-WESTERN RAILWAY.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, asked:—

(a) Has the attention of Government been drawn to a communication from Darbhanga under the heading of “B. N.-W. Ry.,” published in the daily issue of the *Bengalee* of the 21st October last? Will the Government be pleased to state whether it does not think it proper to take any steps to remedy the grievances complained of?

(b) Will the Government be pleased to state whether it is a fact that the Board of Directors of the Bengal and North-Western Railway have proposed to take lease of the Eastern Bengal State Railway? If so, will the Government be further pleased to state whether it has arrived at any decision on the point?

The Hon'ble Mr. INGLIS replied:—

“(a) The Lieutenant-Governor has seen the communication. The Bengal and North-Western Railway is controlled by the Government of India through the Consulting Engineer for Railways, Lucknow. The attention of the Consulting Engineer has been drawn to the grievances stated, and he has been requested to furnish a report on the subject.

“(b) The Lieutenant-Governor has no information.”

CONVEYANCE OF THIRD-CLASS PASSENGERS ON THE EAST INDIAN RAILWAY.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, asked:—

Has the attention of Government been drawn to an editorial in the same issue of the *Bengalee* headed "Herding of 3rd-class passengers in goods wagons on the East Indian Railway"? Will the Government be pleased to state whether it does not consider it desirable to take steps to remove the grievance therein mentioned?

The Hon'ble MR. INGLIS replied:—

"The Lieutenant-Governor has seen the article. The use of covered goods wagons for the conveyance of passengers is at times necessary and unavoidable to meet exceptional rushes of passenger traffic. The rules under which the use of the wagons is permitted are contained in Chapter XIII, paragraph 37 of the General and Subsidiary Rules for the Traffic Department of the East Indian Railway; they have had the approval of Government. The rules guard against overcrowding, and provide for lighting at night. The Traffic Manager, East Indian Railway, has explained that in October last 115 wagons were used for the conveyance of passengers returning from the Pitripakha *mêla* at Gaya, and that the average number taken in each wagon was $23\frac{1}{2}$. The rules permit of 25 being carried in a covered iron wagon in the hot weather, and 34 in the cold weather."

IMPERIAL GRANT FOR EDUCATIONAL PURPOSES.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, said:—

With reference to the Imperial grant of ten lakhs of rupees for educational purposes during the year 1903-1904, will the Government be pleased to state—

- (a) whether any (if any, what) scheme has been prepared for the expenditure of the money during the year?
- (b) how much of the money has already been spent and in what manner?

The Hon'ble MR. EARLE replied:—

"A statement is laid upon the table showing (a) how the Imperial grant of ten lakhs of rupees for educational purposes during the year 1903-1904 has been allotted, (b) how much of the grant made under each head has already been spent or will probably be spent, and (c) the actual or probable balance under each head. It is not possible to give more exact figures, because, in many cases, the money is in process of expenditure by the local authorities. Every endeavour is being made to utilise the anticipated balances before the close of the year."

Statement showing (a) how the Imperial grant of ten lakhs of rupees for Educational purposes during the year 1903-1904 has been allotted; (b) how much of the grant made under each head has already been spent or will probably be spent; and (c) the actual or probable balance under each head.

Sanctioned distribution of the Imperial grant of ten lakhs for Educational work during the year 1903-1904.			Probable amount which will be spent, or amount which has actually been spent.	Probable or actual balance available.
	Rs.	A. P.		
1. For an Assistant Director of Public Instruction.	6,500	0 0	Rupees 1,500 only will be spent within the year, because a successor to Mr. Peake, who has been appointed Assistant Director, has only recently been selected by His Majesty's Secretary of State.	Rs. 5,000 A. P. 0 0
2. For an Inspectress of Schools and her establishment.	3,000	0 0	Most of the money will be available for expenditure under other (Educational) heads, because the lady, who is to be Inspectress of Schools, has only recently been appointed by His Majesty's Secretary of State.	2,000 0 0

Sanctioned distribution of the Imperial grant of ten lakhs for Educational work during the year 1903-1904.		Probable amount which will be spent, or amount which has actually been spent.		Probable or actual balance available.	
	Rs. A. P.			Rs. A. P.	
3. For an additional High School for girls.	8,000 0 0	Arrangements have been made for opening the school; and the money will, it is expected, be spent.		Nil.	
4. For an additional Sub-Inspector of Schools in Singhbhum.	900 0 0	Exact figures are not available, but it is believed that the money will be spent.		Nil.	
5. For opening Commercial classes at the Kurseong Victoria Boys' School.	6,000 0 0	Rs. A. P.	2,900 0 0 (spent)	3,100 0 0	
6. For opening a Middle English School in the northern quarter of Calcutta for Muhammadans.	6,000 0 0		6,000 0 0 (spent)	Nil.	
7. For raising the status of the Dacca Survey School.	60,000 0 0		51,694 14 11 (spent)	8,305 1 1	
8. For the opening of Training Schools for Primary School Teachers.	57,000 0 0	Exact figures are not available, as the money is in process of expenditure by the local officers. Some savings are expected, which will be utilised for the purchase of lands, etc., for the schools.			
9. For opening new institutions for training female teachers.	15,380 0 0	Rs. A. P.	15,380 0 0	Nil.	
10. Additional grant sanctioned in 1903-1904, over and above the grant for 1902-1903, under the head of Grants-in-aid.	1 41,000 0 0	Exact figures are not available: probably the whole sum will be spent.		Nil.	
11. For scholarships to be held in Europe.	4,500 0 0	Rs. A. P.	4,300 0 0 (spent)	200 0 0	
12. For the training of officers in Europe.	2,000 0 0		Nil.	2,000 0 0	
13. For the Astronomical Observatory in the Presidency College.	11,000 0 0		11,000 0 0 (spent)	Nil.	
14. For apparatus for Government schools.	2,400 0 0		1,279 11 0 (do.)	1,120 5 0	
15. For Primary Education, the money having been placed at the disposal of District Boards.	4,00,000 0 0		4,00,000 0 0	Nil.	
16. For Sub-Inspectors of Schools, the money having been placed at the disposal of the District Boards.	63,000 0 0		63,000 0 0	Nil.	
17. For tents for the students of the Bihar School of Engineering.	4,000 0 0		4,000 0 0	Nil.	
18. For opening "continuation" schools.	10,800 0 0	Exact figures are not available, because the money is being spent by the local officers; no savings are expected.		Nil.	
19. For opening four Training Classes for female teachers.	2,500 0 0	Rs. A. P.	2,500 0 0	Nil.	
20. For the salaries of a Nurse and an Assistant Matron at the Victoria Boys' School, Kurseong.	295 8 0		295 8 0	Nil.	
21. For the supply of an oil-gas apparatus, and for the construction of a workshop, for the Rajshahi College.	3,000 0 0		3,000 0 0	Nil.	
22. For the acquisition of land for the extension of the Nawab's Madrasa, Murshidabad.	4,839 0 11		4,839 0 11	Nil.	

Sanctioned distribution of the Imperial grant of ten lakhs for Educational work during the year 1903-1904.				Probable amount which will be spent, or amount which has actually been spent.				Probable or actual balance available.	
	Rs.	A.	P.		Rs.	A.	P.		
23. For a building grant to the Diocesan Girls' School, Darjeeling.	25,000	0	0		25,000	0	0 (spent)		Nil.
24. For the up-keep of the electric plant in the Civil Engineering College, Sibpur.	800	0	0		800	0	0		Nil.
25. For a verandah for the Balasore Zilla School.	3,102	0	0		3,102	0	0		Nil.
26. For the opening of a special class at the Presidency College.	3,150	0	0	The class was opened in June 1903. The greater part of the money will, therefore, be spent.					
27. For the construction of servants' quarters at the Victoria Boys' School, Kurseong.	5,000	0	0		5,000	0	0		Nil.
28. For additional grants to Circle Schools.	676	0	0		676	0	0		Nil.
29. For two type-writing machines for the Commercial Classes at the Presidency College.	663	0	0		663	0	0		Nil.
30. For the construction of new verandahs at the Madrasah Hostel at Chittagong.	1,175	0	0		1,175	0	0		Nil.
31. For the construction of a masonry drain round the Chittagong Training School building.	1,050	0	0		1,050	0	0		Nil.
32. For the reconstruction of the Boarding House for Sonthal students at the Dumka Zilla School.	2,858	0	0		2,858	0	0		Nil.
33. For the acquisition of land for the play-ground of the Taki Government School.	433	5	9		433	5	9		Nil.
34. For raising the status of the Ranchi Industrial School.	1,000	0	0		1,000	0	0		Nil.
35. For initial charges for Gurutaining Schools.	49,239	0	0	Exact figures are not available, because the money is being spent by the local officers: no savings are expected.					Nil.
36. For improvements of the buildings of the Cuttack College.	57,280	1	3	It is reported that Rs. 17,000 only can be spent by the Public Works Department before the close of the year. The balance of Rs. 40,000 will now be utilised for other (educational) purposes.					
37. For the restoration of the Dumka Zilla School.	10,998	0	0		10,998	0	0		Nil.
38. For the purchase of chemicals for the Chemical Laboratory of the Bihar School of Engineering.	1,050	0	0		1,050	0	0		Nil.
39. For the improvement of the water-supply at the Dow Hill Girls' School, Kurseong.	5,200	0	0		5,200	0	0		Nil.
40. For the acquisition of land for the Patna College Hostel.	18,250	0	0		18,250	0	0		Nil.
41. For the extension of the Hooghly College Library.	684	0	0		684	0	0		Nil.
42. For remuneration to officers conducting tests at the Civil Engineering College, Sibpur.	800	0	0		800	0	0		Nil.
	Rs. ...	10,00,522	15 11						
Deduct odd hundreds of rupees	...	— 522	15 11						
Total	...	10,00,000	0 0						

RE-ORGANISATION OF THE PROVINCIAL CIVIL SERVICE.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—

With reference to the statement contained in paragraph 6 of the explanatory notes on the Bengal Financial Statement for 1903-1904 that a grant of one lakh of rupees has been made for the improvement of the status of Sub-Deputy Collectors and that a grant of one lakh and five thousand has been made for the re-grading of Munsifs and additional temporary Sub-Judges, will the Government be pleased to state what action has been taken in respect of each of these matters during the current financial year?

Will the Government be further pleased to state the financial effect of the changes introduced?

The Hon'ble MR. MACPHERSON replied:—

"The scheme for the re-organisation of the Subordinate Civil Service is still before the Government of India, who called for further information, which has recently been submitted. The estimated increase of expenditure provides for an increase in the cadre of this service as well as for a re-adjustment of the number of officers in each grade; and it was inaccurately noted therefore as intended to be allotted (entirely) for improvement of the status of Sub-Deputy Collectors.

"The scheme for the re-grading of Munsifs was sanctioned in 1902, and the increased expenditure of Rs. 74,400 *per annum* involved thereby will proceed against the grant for that purpose. Temporary Subordinate Judges have been sanctioned for six months in three districts, and this increased expenditure, which is estimated at Rs. 9,522, will also be a charge against the grant for such portion of the period as falls within the current financial year."

GRANTS TO DISTRICT BOARDS FOR FEEDER ROADS.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA asked:—

(a) Will the Government be pleased to state the details of the grants made to District Boards for feeder roads during the first-half of the current financial year?

(b) Will the Government be pleased to call for a report shewing in what manner the grants made to various District Boards for feeder roads during the year 1902-1903 were utilised by those bodies and lay the same on the table?

The Hon'ble MR. SHIRRES replied:—

"(a) A statement containing the information asked for in the first part of the question has been laid on the table.

"(b) With reference to the second part of the question, if my hon'ble friend wishes, I can supply him with copies of the annual reports of the Divisional Commissioners on the working of the District Boards: these reports are in print and contain some information on the subject. Or, if he will communicate with me and state precisely why he asks the question, I may possibly be able to supply him with other information which he may desire. The Lieutenant-Governor, however, has no reason to doubt that these grants are properly expended, and he is not willing to call for special reports and returns from a large number of districts unless there is some clear and definite object to be gained thereby."

Annexure to the above Answer.

THE following grants have been sanctioned by the Financial Department in the first-half of the year 1903-1904:—

District.		Rs.
Bogra	For Jamalgunge and Etakhola hat road ...	7,252
	„ Pancabibi to Lokma hat road ...	6,659
Monghyr	For road from Burbigha to Sheikpura railway station ...	50,000
	„ „ „ Serari to Chowriah railway station ...	
	„ „ „ Jaimangla to Serari railway station ...	
	„ „ „ Ramgarh to Sheikpura railway station ...	
		<hr/> 63,911

INCOME-TAX.

The Hon'ble BABU KALI PADA GHOSH asked :—

Will the Government be pleased to state—

- (a) The amount of income-tax assessment in Bengal during the year 1902-1903 on incomes above one thousand rupees, and also the amount of current year's assessment on such incomes?
- (b) The average annual increase in the income tax revenue during the last five years?
- (c) Whether the Government contemplates any reduction in the staff of income-tax assessors in view of the expected decrease in the income-tax revenue on account of the raising of the minimum limit of assessable income?
- (d) Whether the Government is aware that there has been a tendency on the part of some of the officers employed in making assessment of the income-tax to make up the deficiency in revenue consequent upon the raising of the minimum limit by excessive assessments? If so, will the Government be pleased to issue such instructions as the Government may think fit in this behalf?

The Hon'ble MR. SHIRRES replied :—

The replies to sub-heads (a), (b), (c), and (d) of the question are :—

(a) The amount of income tax assessment in Bengal during the year 1902-1903 on incomes above one thousand rupees was Rs. 46,76,552, exclusive of fines, penalties, refunds, &c. The amount of the current year's assessment on such incomes is not yet known.

(b) The average annual increase in income-tax revenue during the five years ending with 1902-1903 was Rs. 1,65,000.

(c) A reduction in the staff of income-tax assessors will be made with effect from 1st April 1904.

(d) The Government is not aware that there is any such tendency.

POLICE CONTRIBUTIONS IN CHOTA NAGPUR.

The Hon'ble BABU KALI PADA GHOSH asked :—

Is the Government aware that a cess called the Police contribution is realised from several elaquadars in the districts of Chota Nagpur? Will the Government be pleased to state whether there is any law authorising the levy of such cess? If there is no law, will the Government be pleased to direct that the realisation of the cess be discontinued?

The Hon'ble MR. MACPHERSON replied :—

"Government is aware that a contribution on account of Police establishments is levied from some of the landholders in the Chota Nagpur Division as from some of the zamindars in other parts of Bengal under the provisions of clause 4, Article VII, Section VIII of Regulation I of 1793.

"These contributions have been realised from the time when the landholders were exonerated from the charge of Police establishments. If in any cases they are not realised under the provisions of the law just cited, it is presumed that they are covered by the terms of the agreements into which the landholders have entered either at the time of settlement of their lands or when they were relieved of their police duties. If in any case any landholder thinks that the contribution should not be realised from him, he can make a representation to the District Officer.

"On the information before him, the Lieutenant-Governor is certainly not prepared to direct that the realisation of these contributions should be discontinued."

POLLUTION OF THE RIVER HOOGHLY.

The Hon'ble BABU KALI PADA GHOSH asked:—

Is it the case, as stated in the *Bengalee* of the 17th September, 1903, that the water of the Bhagirathi is being polluted near some of the mills situated on the banks of the river by the discharge into it of liquified night-soil? If so, then having regard to sanitary considerations and especially to the religious feelings of the Hindu community who regard the Bhagirathi as a sacred stream, will the Government be pleased to direct the discontinuance of the practice?

The Hon'ble MR. SHIRRES replied:—

“THE Government is not aware of any arrangements in mills on the banks of the Bhagirathi such as are indicated. Presumably the question refers to the septic tanks which have been installed in certain mills on the banks of the Hooghly. The substance which is discharged from these tanks is not, as the question would seem to imply, crude sewage in a liquid form, but a clear fluid, in appearance not unlike ordinary river water. When the system is properly worked, the fluid is non-putrescible and nearly odourless. I have a sample of it here which my hon'ble friend may examine if he wishes. This substance is chemically quite different from crude sewage. It is not wholly innocuous, for it still contains bacteria, and it could not be allowed to flow into the Hooghly in proximity to the intake for the Calcutta water-supply; but the contamination from this cause is insignificant compared with that from riparian Municipalities and villages, from carcasses floating down the river, and from boats on the river. At the same time the Government fully recognises the desirability of keeping the water of the Hooghly as clean as possible, and some time ago the Commissioners of the Presidency and Burdwan Divisions were asked whether the effluent from these septic tanks could not otherwise be disposed of. What action will be taken with this object cannot be stated until the reports have been received and duly considered.”

RECRUITMENT OF FEMALE COOLIES BY GARDEN-SARDARS.

The Hon'ble BABU KALI PADA GHOSH asked:—

Has the attention of the Government been drawn to the fact that there is no distinct provision in the Assam Labour and Emigration Act, 1901 (VI of 1901), for an inquiry by the Registering Officer, in the cases of recruitment of female coolies by garden-sardars, although there are such provisions in cases of recruitments by recruiters. Will the Government be pleased to state if any measures have been taken to prevent the abuses which are likely to be committed for want of such a provision in the law?

The Hon'ble MR. EARLE replied:—

“This matter has already received the special attention of Government. In the case of the recruitment of women by recruiters, the Registering Officer has to be satisfied of the consent of the guardian, or of the fact that there is no guardian, in the manner laid down in section 34 (3) and (4) of Act VI of 1901. On the other hand, under section 69, read with section 9, when women are recruited by garden-sardars, the presumption is that the guardian (if there is one) consents, unless he comes forward to object; and it is only when there is positive reason for suspecting that a woman is being “cajoled away” from her lawful guardian, that special inquiries should be made. At the same time, the terms of section 69 clearly do not contemplate that the examination by the Registering Officer of intending emigrants should degenerate into a mere matter of form. Accordingly, it has been decided that it is incumbent on Registering Officers to make special inquiries in cases in which circumstances arouse a suspicion that a contract is being entered into by a woman against the wishes, or without the consent, of her husband or lawful guardian. This procedure is being followed with good results, and no further action at present seems necessary.”

THE BENGAL SETTLED ESTATES BILL, 1903.

THE Hon'ble MR. BUCKLAND applied to the President to suspend the Rules of Business for the purpose of referring the Bill to facilitate the family settlement of estates in Bengal to a Select Committee.

He said :—" In making this application I ought to explain in a few words how the situation has arisen which makes it necessary. It will be within the recollection of the Council that, on the 8th August last, I obtained leave to introduce the Bengal Family Settled Estates Bill. It was then referred to a Select Committee, which met from day to day and took much trouble in making their report quickly after fully examining all the papers which had then been submitted to them, and presented their report at the meeting of the Council held on the 14th of August. On that occasion the late Officiating Lieutenant-Governor stated in Council that for the reasons which he gave it was impossible to proceed with the discussion and publication of the report as the matter had to be referred again to the Government of India. That reference has been made, and, their reply having been received, it is now necessary to proceed with the measure. But the rules of the Council are such that, the report having been once presented, it ought to be now taken into consideration. But now that fresh matter has to be introduced, the Bill must go again to a Select Committee, and, therefore, I have to ask you, Sir, to suspend the Rules of Business to enable this to be done."

The Hon'ble, the PRESIDENT, having declared the Rules suspended,

The Hon'ble MR. BUCKLAND moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Hare, the Hon'ble Mr. Gupta, the Hon'ble Mr. Woodroffe, the Hon'ble Rai Tarini Pershad, Bahadur, the Hon'ble Nawab Bahadur, Khawaja Salimullah, of Dacca, the Hon'ble Dr. Asutosh Mukhopadhyaya, and the Mover, with instructions to report on the 9th January.

The Motion was put and agreed to.

THE BENGAL PUBLIC PARKS BILL, 1903.

THE Hon'ble MR. BUCKLAND also moved for leave to introduce a Bill for the regulation of Public Parks in Bengal.

He said :—" As the Bill is a short one, consisting only of eight sections, I propose, in accordance with the usual practice of this Council when the Bill is a short one, to make my explanatory remarks on the first opportunity that offers. The object of the Bill is to provide for the protection of Public Parks and Gardens in Bengal from injury, and to secure the public who visit these parks from molestation and annoyance while resorting to them.

"The late Superintendent of the Botanic Garden at Sibpur, Howrah, Sir George King, shortly before retiring from the service a few years ago, reported to Government, as the result of his 25 years' experience, that it was not only desirable but necessary that the rules in force in the garden there should be put on a legal basis. Hitherto, they had only been operative as having been sanctioned by Government. Sir George King stated that, at the time when the rules were originally issued, the mere fact of an order having the sanction of Government was sufficient to insure its being obeyed, but he had found from his long experience that something more had become necessary. The warnings and checkings which it had been found necessary to have recourse to, under the rules, were found to be insufficient in practice, and, when cases came before the Law Courts, they invariably failed because of the want of jurisdiction. He mentioned some cases in which people had been found committing small offences against the rules and certainly deserved punishment, but, on their being prosecuted, it was impossible to have them punished. Sir George King therefore suggested that a small Bill should be brought into Council and passed on the model of the Public Parks' Act in England. A Bill was framed for the purpose, and at one time it was thought likely that a Bill would be passed in the Council of His Excellency the Governor General, but for some reason or another that idea was abandoned, and as there was a great deal of legislation

before this Council at one time, this Bill was held in abeyance. Within the last year or two, however, the project has been revived and further experience in the gardens there and in other places have shown that it is necessary that the management, not only of the Botanic Garden, Howrah, but also of the Zoological Garden, Alipur, should have legal powers to enforce the rules which they have found necessary for the preservation of peace and order, as I might say, and for the protection of the property in the gardens under their charge.

"The authorities of the gardens, both at Howrah and at Alipur, have been consulted, and they have expressed their entire approval of the project as being necessary to give them the power they want to carry out the rules. The rules are perfectly simple and are probably well-known to the public already, but as I have said, it is impossible to obtain the punishment of any one offending under the rules. The Bill, therefore, has been framed and modelled on the English Parks' Act.

"The principal provision is that, a certain number of the higher subordinate officials are to be made park durwans and vested with small police powers. They are to have power to arrest people who infringe the rules and to take them up to the Superintendent in charge of the garden, or in his absence, to the next highest officer in charge of the garden, by whom they may be detained until they give their correct name and residence. As soon as they give their correct name and residence they will be allowed to go. There is also a provision in the Bill that no person can be detained under this section for a longer period than 24 hours, but I suppose five minutes will be the ordinary period of detention, and there need be no detention at all, if an offender at once gives his correct name and residence.

"The next provision gives to the park durwans certain general powers, duties and responsibilities. There will be very few of them in both gardens, perhaps half-a-dozen in each case. These park durwans are to be vested with the powers, and be liable to the duties, of a police constable within the limits of the police station in whose jurisdiction their park or garden is, and every park durwan is to be subordinate to the Superintendent of the garden.

"There is also a provision for fine or imprisonment for an assault on a park durwan. I am sorry to say that many of the offences which have occurred both at the Botanic Garden, and at the Zoological Garden, are cases either of assault on the servants of the garden, or threatened assault.

"The Bill also proposes to take power on the lines of the Public Parks' Act in England to give to every police constable employed within the limits of the police station within whose jurisdiction the garden is, the powers, privileges and immunities conferred on a park durwan by this Act. That in fact is the whole of the Bill.

"It is intended that the Bill should apply at first only to the five public parks or gardens specified in the Schedule, with power to the Government to add any more parks or gardens to the number.

"The only object of the Bill is to legalise what is now attempted to be carried out by the rules which have long been in force as the rules of these gardens, but which have had no legal authority. I therefore beg to move for leave to introduce a Bill for the regulation of Public Parks in Bengal.

The Motion was put and agreed to.

THE BENGAL EXCISE BILL, 1903.

THE Hon'ble MR. BUCKLAND also moved for leave to introduce a Bill to consolidate and amend the law in force in Bengal relating to excisable articles and the revenue derivable therefrom.

He said :—"This Bill will be a much longer one and will take up much more of the time of the Council than the Bill upon which I have just been speaking. It is therefore my intention only to make a few remarks on this occasion and to address the Council at greater length on a subsequent occasion when it becomes necessary to ask for the Bill to be read in Council or to be referred to a Select Committee. I will only now say that the Bill is chiefly a consolidating measure, and that opportunity has been taken to make certain amendments of the law as the result of long experience.

"This Bill has been in contemplation for the last ten years. That is all I need say on this point at the present moment. The last consolidating Excise Act was passed in 1878. When the Bill, which afterwards became that Act, was introduced into Council by the Hon'ble Mr. Reynolds, the Secretary to the Government of Bengal, in 1876, he stated that the Excise Law was then contained in five or six Acts, and it was therefore desirable to consolidate the law. He quoted at that time a dictum of the Government of India of 1875 in which that Government said that it was most desirable that the law on a subject on which the public were largely interested should be clearly arranged, and therefore the Government of India suggested consolidation."

"If it was thought necessary to consolidate the law in 1876, when the law on Excise was contained in five or six Acts, it is much more necessary to consolidate the law now, when the Excise law is contained, not only in the Act of 1878 but also in nine Amending Acts."

"It has been the custom, when Acts are amended from time to time, to issue copies of them as modified up to date. I hold in my hand a copy of the Excise Law as modified up to the 1st of December 1903, but it is one thing to have an Excise Act complete in itself and a very different thing to have the Excise Law as modified up to date by amendments in the possession of a few officers and the officials in charge of the Excise Department. It is hardly sufficient, I think, to be content with the Legislative Department issuing the additions to the law itself as modified up to date. From time to time it is certainly necessary that the law should be consolidated and re-issued in a complete form. The Bill, which I now ask leave to introduce, will extend the main Act from 85 sections to 105. As I have already said, the opportunity has been taken to make some amendments which are recommended by long experience. Many suggestions have been received from many officers and other quarters, and some amendments are based on the experience gained in other Provinces where the Excise Act has been administered with great ability and profit to the country."

"I do not propose to go into any further details on this occasion, and beg to move for leave to introduce a Bill to consolidate and amend the law in force in Bengal relating to excisable articles and the revenue derivable therefrom."

THE Hon'ble MR. WOODROFFE said:—"I have listened with attention to the speech of the Hon'ble Member in charge of the Bill, and have noticed with regret that although this is a 'Bill to consolidate and amend the law in force in Bengal relating to excisable articles and the revenue derivable therefrom,' and the preamble states:

'Whereas it is expedient to consolidate and amend the law in force in Bengal relating to the manufacture, sale, possession, import, export and transport of excisable articles, to the regulation and licensing of places in which such articles are sold, and to the collection of the revenue derived from such articles.'

"No reference seems to be made to the desirability of introducing into the Bill such clauses and provisions as are to be found in the License Acts in Europe with a view to prevent drunkenness."

"When this Act was last before the Council in 1903, being a Member of the Select Committee, I proposed certain amendments in order to discourage and prevent, as far as possible, the sale of intoxicating liquors and drugs to habitual drunkards, women and children. The principle of these amendments was accepted unanimously by the Select Committee, but it being pointed out to me that it was the intention of the Legislature shortly to introduce a Bill to consolidate the whole of the provisions relating to excisable articles, in which the amendments proposed would more properly find place, I consented on the assurance of the Hon'ble Member in charge of the Bill then before the Select Committee that the amendments which I proposed to introduce into the Act of 1903 should then be considered and dealt with. I consented to their standing over until the introduction of this Bill. In the speech of the Hon'ble Member I find no reference to them. They are very important matters affecting the well-being of the community. In a licensing Bill we have not

only to consider the interests of the Government and the profit arising from collection of revenue from the sale of excisable articles, but also the health and morals of the community, and the diminution of the prevalent vice of drunkenness and crime consequent thereon, and we are bound to put upon persons who hold licenses from Government such control as shall be proper and expedient in order to prevent these licensed houses becoming sinks of iniquity and a danger to the community.

"I trust, therefore, that this Bill does contain such provisions, but if it does not, I would respectfully suggest that the matter should be carefully considered, and proper powers taken for the introduction of such clauses."

THE Hon'ble the PRESIDENT, said:—"I think that I may, perhaps, best serve the interests of the Council by simply saying that what the Hon'ble Mr. Woodroffe has just said will certainly receive consideration between the present time and the date when the Council will be asked to refer the Bill to a Select Committee. I suppose it is not necessary to call upon the Hon'ble Member in charge of the Bill to make any remarks in this connection, as he has promised that he will lay before us the principles in detail when he will move that it be read in Council or be referred to a Select Committee. I can give the Hon'ble Mr. Woodroffe the assurance that his remarks will receive full consideration."

The Motion was then put and agreed to.

THE BENGAL TRAMWAYS (AMENDMENT) BILL, 1903.

THE Hon'ble MR. SHIRRES moved for leave to introduce a Bill to amend the Bengal Tramways Act, 1883.

He said:—"This Bill will, I think, be a record in this Council for shortness and has for its object the introduction of only two words into the existing Act.

"The first section runs as follows:—

'This Act may be called the Bengal Tramways (Amendment) Act, 1903.'

"Section 2 is as follows:—

'After the word 'shorter,' in the proviso to section 41 of the Bengal Tramways Act, 1883, the words 'or longer' shall be inserted.'

"All that is desired by this Bill is that the words 'or longer' shall be inserted.

"In the law as it stands at present, when the local authority makes an agreement for the construction of a tramway, it must, at the expiry of a period not longer than 21 years, exercise the option or right of purchase. This limitation to 21 years has in practice been found to prevent the construction of tramways, and therefore this Bill has been introduced to extend the period."

The Motion was put and agreed to.

The Council was adjourned to Saturday, the 19th December 1903.

CALCUTTA;
The 22nd December, 1903.

F. G. WIGLEY,
Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.



The Calcutta Gazette.

WEDNESDAY, DECEMBER 30, 1903.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met in the Council Chamber on Saturday, the 19th December, 1903.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. W. A. INGLIS.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble MR. R. T. GREER.

The Hon'ble MR. T. K. GHOSE.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble MR. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble NAWAB BAHADUR KHWAJA SALIMULLAH, of Dacca.

The Hon'ble MAHARAJA SIR RAVANESHWAR PRASHAD SINGH BAHADUR, K.C.I.E., of Gidhour.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BHUPENDRA NATH BASU, M.A., B.L.

The Hon'ble BABU SALIGRAM SINGH.

NEW MEMBER.

The Hon'ble BABU SALIGRAM SINGH took his seat in Council.

THE BENGAL PUBLIC PARKS BILL, 1903.

The Hon'ble MR. BUCKLAND introduced the Bill for the regulation of Public Parks in Bengal, and moved that it be read in Council.

He said:—"At the last meeting of the Council I explained at some length the object of this Bill for the regulation of Public Parks in Bengal and the necessity for it. I do not think I need trouble the Council with any further remarks on this occasion. I therefore beg to move, Sir, for leave to introduce the Bill for the regulation of Public Parks in Bengal, and to move that it be read in Council."

The Motion was put and agreed to, and the Bill was read accordingly.

The Hon'ble MR BUCKLAND then applied to the President to suspend the Rules of Business for the purpose of referring the Bill to a Select Committee.

The Hon'ble the PRESIDENT said:—"In passing orders on this application of the Hon'ble Mr. Buckland, I think it right to say that I do not as a rule consider it well to suspend rules which have been solemnly made, but as I do think that there will be a great loss of time in this case I shall suspend the Rules of Business. I may also inform the Council that, as I think there is loss of time generally if the rules on this subject are observed it is under consideration to have them amended."

The Hon'ble Mr. Buckland moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Mr. Gupta, the Hon'ble Mr. Greer, the Hon'ble Rai Tarini Pershad, Bahadur, the Hon'ble Maharaja Sir Ravaneshwar Prashad Singh, Bahadur, of Gidhour, and the Mover.

The Hon'ble BABU BHUPENDRA NATH BASU said:—"With your Honour's permission I beg leave to offer a few remarks on this Bill. At the last meeting of the Council the Hon'ble Member in charge of the Bill was pleased to observe that this Bill was only following the lines of the Public Parks Act in England, and that it was introducing nothing into the Legislature of this country which required any particular notice. He was also pleased to observe that in the case of detention of any person visiting the gardens, the detention would be only for a few minutes. The Hon'ble mover referred to these matters as if they were matters of very little importance in considering the provisions of this Bill. I may say at once that I am against the multiplication of Penal Laws in this country. We have a most elaborate system of Criminal Law which embraces within itself every possible crime and misdemeanour which may arise. Some of these parks to which this Bill is intended to apply have been in existence in Bengal for many years; the Zoo has been in existence in its present site for more than a quarter of a century, and the Botanical Gardens for a very much longer period, but up to now the necessity for a Bill of this description has not been felt. We have been referred to no specific instance in which there has been a breach of the peace, or any disturbance of the public peace in these gardens which the law as it now stands has failed to deal with.

"I may remind the Council that taking as an instance the Zoo, a large number of ignorant villagers with their women-folk and children, visit the Zoo daily. It forms one of the chief attractions in the city of Calcutta to the mufassal men. I do not think it necessary to refer in this Council to the feeling with which the country at large and more especially the more ignorant classes regard the subordinate branches of the Police, and here we are seeking to invest the park durwans with the powers of police constables, with the powers of arresting offenders on the spot and taking them to the thana. I submit that the terrors of the subordinate Police of this country are enough, and they need not be added to in this way unless a strong and clear case has been made out. There have been rules for the guidance of visitors to these gardens in existence for many years, and to our knowledge these rules have been seldom, if ever, violated. The rules are of a very simple kind and can very easily be followed by the visitors who frequent the parks. If the durwans get power to arrest a man for

violating any of these rules, it will be imposing a very severe burden upon the durwan himself and imposing a very severe penalty upon the people visiting the parks. The analogy of the English Law has been cited. We know, Sir, that such a law exists in England, but the mere existence of a Law on the Statute Book of the British Parliament is not enough to create an analogy between England and India. There they have to deal with a more virile race, with men who know their rights and know how to assert them. Here we have to deal with ignorant villagers, most of them unacquainted with the vernaculars in which these rules are to be printed and put up in the gardens,—ignorant villagers who have a greater dread of the police constable than of the highest dignitary in the land, who do not know how to protect themselves and do not know how to act in an emergency like this when for a very simple act or for an unintentional offence they may be arrested by the park durwan, who is to be vested with the powers of a police constable. If the analogy of British Laws was used in cases where people prayed for a privilege, as in a case where the Government sought to impose a liability which was necessary, I should have nothing more to say. But if the analogy was brought forward for the sake of introducing a piece of legislation which is not necessary, I think I have a clear right to say that this analogy in itself should not be held sufficient. In the case of the park durwan or park-keeper in England the right to arrest applies only to a case in which the offence takes place before the park-keeper himself. Here this Bill goes further than that. Clause 5 says: 'If any person who in the presence of a park durwan in uniform has committed or has been accused of committing a breach of any rule made under section 3, refuses, on demand of such durwan, to give his name and residence, or gives a name or residence which such durwan has reason to believe to be false, such person may be arrested, etc.'

"This is clearly introducing an innovation which does not exist in the English Act. It goes further than the English Act. As I have been trying to explain to this Council, the Zoo for instance is visited mostly by ignorant men who reside far away in the interior; they can bring forward no evidence that will satisfy the park durwan that the name and address given is correctly given, nor can the durwan himself ascertain whether the name and address given is correct.

"Apart from the initial difficulties of having to deal with ignorant men, there is this substantial difficulty in the event of this section being put into operation. I do not wish to take up the time of the Council unnecessarily, but I humbly beg to submit that no case has been made out for the introduction of such a law. The crowds who frequent these parks, the Zoo and the Botanic Garden, mostly belong to the non-criminal classes. As we all know, the object of their visit to Calcutta is to go to Kalighat, and on the day before their departure they take a turn round and go to the Zoo, and woe to the villager who should by any chance be detained on the day of his departure for twenty-four hours. If such a law is to be introduced it should be safeguarded. The simpler remedy would be to invest the Park Superintendent with certain powers to enable him to impose a fine, so that he might deal with an offender there and then, instead of detaining a man and taking him before a Magistrate. These are the observations which I have ventured to offer for the consideration of the Council."

The Hon'ble MR. SHIRRES said:—"I have listened with much attention to what has fallen from the Hon'ble Babu Bhupendra Nath Basu. The main substance of his remarks is to the effect that no case for legislation has been made out. He says that to our knowledge no such a case has ever occurred to justify the introduction of this measure. I am sorry to say that he is under a misapprehension, and I shall be happy to furnish him with the list of offences which led to this Bill being drawn up. The complaints which led to the drafting of this Bill have extended over a long series of years, and the attention of the Government has been drawn to the matter repeatedly by Sir George King and the present Superintendent of the Botanic Garden.

"The Hon'ble Member also objects to certain of the provisions of the Bill, but it is hardly my part to go into this. I would merely remark that the

provision as to the taking of the address of an offender is a well known provision in the Code of Criminal Procedure which has been in force for a long series of years, and has not been found to be productive of the difficulties which the Hon'ble Member anticipates."

The Hon'ble MR. BUCKLAND said:—"I should like to say a few words in reply to the Hon'ble Member who spoke last but one. He says that the necessity for the Bill has not been made out. I thought I said enough on the last occasion to show that the rules under which these gardens are now managed are not sufficient for the purpose. I shall be glad to go over the ground again with the Hon'ble Member if he desires me to do so in the Select Committee to which I propose to add his name as a member. He also said that no specific cases have been brought to the notice of the Council to show the necessity for this measure. If I did not bring specific cases to the notice of the Council it was not for want of them. I have here provided myself with eight specific cases from the Botanic Garden and a similar number from the Zoological Garden to show that cases have occurred in which the powers for which I am now asking the Council were necessary. The people who visit the gardens are not only the poor unsophisticated villagers to whom the Hon'ble Member refers, but there are sometimes rowdy and turbulent gentlemen belonging to other nationalities whose spirits sometimes leads them into excesses which they no doubt regret, but for which they must be called to account.

"The Hon'ble Member also quoted some of my remarks on the last occasion to the effect that the detention was only to be for a few minutes. I think I also said that there need be no detention at all if the person accused gave his correct name and address. How the correctness of the name and address is to be ascertained is a matter of some difficulty. But it may be supposed that when a person is under such accusation he will give his correct name and address or he might find himself in greater trouble hereafter. Nor is it the case that a park durwan is to take an accused person off to the chana. He has first of all to take him to the Superintendent and in his absence to the next highest officer in the garden, who we may presume is a person of some intelligence and respectability, and by whom the case will be properly investigated, so that no injustice may be done by the park durwan or any other person concerned. I do not think I need detain the Council at any length in referring to this subject in greater detail; in fact, there is nothing more to be said. It is quite essential that these rules, which have been long in force under the sanction of the Government, should have legal force, and if the sections are not drafted entirely to the satisfaction of the Hon'ble Member, it will be open to him to make any suggestion he likes in Select Committee."

The Hon'ble MR. BUCKLAND then moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Mr. Gupta, the Hon'ble Mr. Greer, the Hon'ble Rai Tarini Pershad, Bahadur, the Hon'ble Maharaja Sir Rameshwar Prashad Singh, Bahadur, of Gidhour, the Hon'ble Babu Bhupendra Nath Basu, and the Mover.

The Motion was put and agreed to.

THE BENGAL EXCISE BILL, 1903.

The Hon'ble MR. BUCKLAND introduced the Bill to consolidate and amend the law in force in Bengal relating to excisable articles and the revenue derivable therefrom, and moved that it be read in Council.

The Hon'ble BABU BHUPENDRA NATH BASU said:—"I should like to point out that the Bill as printed is defective. Section 15 does not appear in the printed Bill circulated to us."

The Hon'ble the PRESIDENT:—"This is undoubtedly a printer's error, but I do not think it could have led to a mistake on the part of Members. It has been promised by the Secretary that a corrected copy will be circulated later on, and this I think will relieve the technical difficulty raised. I do not think any Hon'ble Member could have been led to any misunderstanding by reason of this clerical mistake having been made."

The Hon'ble BABU BHUPENDRA NATH BASU said:—"It is not for the purpose of taking a technical objection that I have drawn attention to this

omission. These are very important provisions, relating to the sale and possession of excisable articles, in which we, as representatives of the public, are more interested than in the revenue portion. It does not appear in this Bill, and therefore we are not in a position to judge of this Bill. We are more concerned in the possession and sale of excisable articles than in the revenue derivable therefrom."

The Hon'ble MR. ELWORTHY said:—"I don't find section 16 in the printed copy of the Bill in my hand."

The Hon'ble the PRESIDENT said:—"I understand that there is nothing left out of the Bill, and that the only mistake is that there has been some slip in the numbering of the sections. Is that not so, Mr. Elworthy?"

The Hon'ble MR. ELWORTHY said:—"All the intermediate sections between section 14 and section 23 appear to have been omitted. From section 14 it goes off to section 23."

The Hon'ble the PRESIDENT said:—"I should like to explain to Hon'ble Members precisely what has occurred. If Hon'ble Members will look at section 7 of the Bill at the top of page 8, and run down the page, there is section 8; then follows section 9, and then on the top of the next page we have section 7 again, so that immediately after section 9 comes a second section 7, in the copy that has been circulated. That second section 7 ought to be section 10. Then section 7A should be section 11; section 8 following ought to be section 12; section 9, in Chapter III, ought to be section 13; section 9A ought to be 14, and section 9B ought to be 15; section 10 should be section 16; section 11 should be section 17; section 12 should be section 18; section 12A should be section 19; section 12C should be section 20; section 12D should be section 21; and section 14 should be section 22; and then we come to section 23. Nothing has been left out: there has only been a misprint in the numbering. Another copy is ready for circulation now. Are you satisfied with regard to this, Mr. Elworthy?"

The Hon'ble MR. ELWORTHY said:—"Yes. I am satisfied, Your Honour. I want to say a few words on this Bill, but the Hon'ble Mr. Buckland has not spoken on his Motion yet."

The Hon'ble MR. BUCKLAND said:—"At the last meeting of the Council, when this Bill was introduced, I promised that I would speak at greater length on this occasion. With your permission I propose now to give a short history of the measure and to allude to some of the more important provisions of the Bill.

"So long ago as 1892-93 a question arose as to the importation and taxation of Shahjehanpore rum in connection with the prohibition of its importation into Bengal except under bond. The matter was of some difficulty and had to be referred to the Government of India, who had to legislate in the Act of 1896 to meet the point then at issue. When that matter was before the Government of India, they, in correspondence with the Government of Bengal, said that it was open to the Local Government to amend their Excise Act if the Lieutenant-Governor desired it. The Government referred to the Board of Revenue, who in due course of time sent in a number of proposed amendments to the Act. In the succeeding year, 1895, the Board submitted more amendments, and a *précis* of 48 pages of opinions of officers. They were then told to redraft the Bill. In 1896 the Board submitted a revised Bill, a full Bill with 68 more pages of opinions from Government officers. That same year the Board submitted a revised Bill No. 2 with 46 pages of, '*précis* of opinion' of Government officers. I need not go through, even in this analytic way, all the correspondence, which has been of considerable length. It will be sufficient perhaps to say that, besides the two long lists of proposed amendments and correspondence, there have been letters on the subsidiary matters which have been incorporated in the Bill now before us. All the matters with which it was intended to deal in this consolidating and amending Bill have not survived the ordeal of the correspondence to which I have referred, and it is therefore unnecessary for me to refer to those which have dropped out of the main objects of the Bill as originally introduced. Those still surviving are the following: the better regulation of ganja warehouses, the removal of a defect in the law as to medicated liquor, the particular cases which have

come before the Law Courts to which I shall have to refer at greater length hereafter, the legalization of different rates of duty, the export of exciseable articles, and the question of imprisonment in lieu of or in addition to fine on first conviction.

"Subsequently other subjects have cropped up, such as, the prohibition of employment of children in licensed premises and the necessity for a provision to prevent bottling for sale without a license. Provision has been made to meet all these points and many others, to which I will now invite the attention of the Council.

"I propose to run over the principal provisions of the Bill referred to in the Statement of Objects and Reasons. In the first paragraph of that Statement it will be seen that reference has been made to a proposal put forward by the Calcutta Wine, Spirit and Beer Association in which they ask that the bottling of wine and spirits for sale should be prohibited except under a license. That proposal was made by the Association so long ago as 1895 when they asked for this amendment of the law with a view to render more difficult fraud upon consumers by the sale to them of spurious imitations. It transpired that a great deal of cheap, white, silent, spirit was being imported from Germany and was being utilized for the manufacture of spirits and was being sold in the market in Calcutta and elsewhere under well-known names, while they were really spurious imitations. An inquiry was made into the matter at great length by Government, and it was ascertained that this stuff was not of a harmful character, but that there was no doubt that a fraud was being perpetrated upon consumers, who were led to believe that they were buying articles which were really genuine. The object of this provision of the Bill is to prevent German spirits sophisticated to resemble Whisky or Brandy from being sold as the genuine article.

"The next clause to which I need refer, is one which proposes to give power to the Board of Revenue, subject to the sanction of Government, full power to regulate the export of excisable articles. The necessity of such provisions was brought to notice in connection with the export of *ganja* to London without pre-payment of duty. I suppose it can hardly be doubted that some provision is necessary to deal with this matter in our Excise Law.

"It is also necessary for the Board to have power to realize on any exciseable article imported from a Province in British India such duty as a Local Government has fixed in respect of a like article when manufactured in Bengal, or, if no like article is manufactured in Bengal, then such duty as the Local Government may fix on this behalf. The object of this provision is to ensure that dutiable articles consumed in Bengal should pay a proper duty.

"Another clause proposes to introduce a definition of 'Spirit.' The present Act contains no definition of 'Spirit,' but defines 'Spirituous liquor.' This has been included for the reasons given in the Statement of Objects and Reasons. Then it will be within the power of the Local Government to declare what shall be deemed to be 'Country spirits' and 'Foreign liquor,' respectively.

"Referring to another matter, the present law fixes a maximum for the retail sale of each exciseable article, and difficulty has been felt from time to time owing to the limit of the retail sale being stereotyped in the Act. It is therefore now proposed to reserve power to the Board to fix the limits of retail and wholesale, respectively, for the whole Province or any specified local area.

"In another clause it is proposed with regard to intoxicating drugs to deal with the collection as well as the cultivation of plants. As many Members of the Council are doubtless aware, most of the *bhang* which is used in this Province is collected from wild plants; it grows wild; it is not cultivated. It is therefore necessary to have power in the law to deal with the unlicensed collection of these intoxicating drugs.

"It is also proposed to take power to have all stills licensed. It will doubtless be a surprise to the Council to hear that the present law does not provide any punishment for the possession of an unlicensed still. When therefore the law provides that in future all stills are to be licensed, obviously any one in possession of an unlicensed still will be subject to a penalty.

"The Bill also proposes to give power to the Excise Commissioner to fix the limits for a distillery. At present only the District Officer has power to do this, but sometimes liquor is supplied from a distillery to more districts than one. It is therefore essential that somebody higher than the Collector should have power to fix these limits, so that two or more districts can get their supplies from the same distillery.

"It is also proposed to take power in the Bill for the establishment and regulation of warehouses for the storage of hemp drugs. There is a system now for the licensing of warehouses for these drugs in Bengal, and it is now proposed to take legal power for their establishment and regulation.

"It is also proposed to add to the rule-making powers of the Board in order to cover the new matter introduced into this Bill.

"I next come to a provision which is taken from the Madras Act. It has often been alleged that deleterious substances are used in the process of manufacture, and it has therefore been thought desirable that the Excise authorities should have power to prohibit the use of such substances or the use of particular flavouring or colouring matters in blending spirits for the market.

"I next come to an important provision. It is proposed that the law should be slightly amended, so as to prohibit absolutely the possession of even the smallest quantity of any exciseable article that has been illicitly obtained. I think the reasonableness of this provision speaks for itself.

"In a case which came before the High Court, it was decided that under the present law an excise-officer has no authority to enter and search a house in which a 'Foreign exciseable article' may be suspected to have been concealed. To meet this defect, a definition of 'Foreign exciseable' articles has been embodied, and the power given under clause 20 will refer to all exciseable articles generally.

"It will be within the recollection of the Council perhaps that by the Excise Bill passed into the Act of last spring, generally known as the Barmaid's Act, power was taken to prevent the employment of women on licensed premises. It is now proposed to go further and prevent the employment of children under twelve years of age.

"In another clause it is proposed to amend the law so as to render a license or permit liable to be summarily cancelled for any offence against the Excise Act or the Indian Merchandise Marks Act, or any section introduced into the Indian Penal Code by section 3 of the Merchandise Marks Act. The necessity for this has been shown by the case to which I referred very briefly a short time ago. The whole case is practically set out in paragraph 29 of the Statement of Objects and Reasons. At present, a person who holds two or more licenses and is an offender against the conditions of one of his licenses could not be dealt with by having his other licenses cancelled. Under the law as it stands, he was allowed to continue in possession of the licenses which he held. It is now proposed that a breach of the conditions of any one of his licenses should render him liable to the cancellation of all his licenses.

"In another clause it is proposed that when a licensee surrenders his license, he should be required to pay up for the whole period of the currency of the license. This principle, which is a very sound one, will be tempered by a proviso to permit the Excise Commissioner to remit to the vendor any sum payable by him.

"It is also proposed to amend the present law so as to give excise-officers not below the rank of Sub-Inspectors the power to enter and inspect shops. The power of inspection is necessary if any good is to be done.

"There is another section in which it is proposed to dispense with the attendance of the police in the search of a house. At present an excise-officer, on receiving information, can only search in the presence of an officer of police not below the grade of a corporal or head-constable. As police-officers are not everywhere available immediately, many cases escape detection. This proposal will no doubt commend itself to the Council.

"In another clause, paragraph 41 of the Statement of Object and Reasons, it is proposed to require every person employed by Government to take all reasonable measures within his power to prevent the commission of any breaches of the Act.

"In another clause provision is made for bail being accepted and to render it obligatory that the bail, if the parties tender a proper amount, is accepted. The system is found to have worked well in Madras.

"It is also proposed to give legal authority to what has always been the practice in Bengal, *viz.*, the power of closing shops when troops are passing or when any disturbance is apprehended or is likely.

"In many cases, it has come to the notice of Government that simple imprisonment has not been found effective to induce accused persons to pay the fines imposed upon them. A list of cases spreading over two years has been prepared; and this list, which is in my possession, shows that this power to punish by fine only for the first offence is insufficient to secure an observance of the law. It is therefore proposed to take power to render an offender liable to imprisonment even in the case of a first offence, and not only as before in cases where a previous conviction has been proved.

"A provision is required in the law to meet the common case of licensed vendors of distillery liquor selling outstill liquor. There is no provision in the law at present under which they can be dealt with, except that they can be prosecuted for a breach of the conditions of their license and fined Rs. 50. Therefore further legal powers are required by the excise authorities to deal with such cases.

"In the present law there is power to punish a licensee, but not his servant, for certain breaches of his license, committed by the servant. A case has occurred before the Courts which shows that such power is not sufficient. It is desirable to assimilate the practice in Bengal to that in Madras and to render the holder of an excise license as well as the actual offender punishable for any offence committed by any person in the employment of the licensee or acting on his behalf as if he had himself committed the same, unless he can prove that all reasonable precautions were exercised by him to prevent the commission of the offence.

"It is also proposed to give the Collector, as distinct from the Magistrate, power to compromise cases of offences under the Excise Act.

"It is also proposed to amplify the present power in the law which the authorities possess to exempt certain articles from the provisions of the Act on special festivals or on special occasions.

"These, Sir, are the principal cases in which power is required to be taken to amend the law. I think that, when the Select Committee and the Council come to consider them in detail, it will be found that there is nothing in them which is not reasonably required for administrative purposes or which in any way conflicts with the liberty of the subject to any improper extent.

"I now, Sir, come to the proposals adverted to by the Hon'ble Advocate-General at the last meeting of the Council. It will be remembered that the Hon'ble Advocate-General, whose absence from this meeting I regret to notice, referred to certain proposals which he had made before the Select Committee on the Barmaids' Bill last spring, the object of which was to more effectively watch over and prevent the supply of exciseable articles to drunkards or to children. The amendment which the Hon'ble Advocate-General proposed to introduce last February in the Barmaids' Bill was considered by the Select Committee to be acceptable in principle, but to be outside the limit or scope of the legislation then in hand. In fact, the matter was put off until the general revision of the Excise Act was taken in hand, with which we are now dealing, and the Hon'ble Advocate-General withdrew his proposals on that occasion, observing that effect was to some extent to be given to the principle of his proposals by the introduction of the conditions prohibiting the sale of intoxicating liquors and drugs to persons answering a certain description and to children.

"These proposals of the Hon'ble Advocate-General were duly considered by the Government during the summer. They referred the matter to the Board, and the Board obtained a report from the Excise Commissioner. The Excise Commissioner went into the matter very thoroughly, and showed that the particular proposals advanced by the Hon'ble Advocate-General were both impracticable, and, so far as this country was concerned, unnecessary. The Excise Commissioner laid particular stress upon the fact that the practical results of the proposed amendment of the law would be to throw upon the licensed vendor an impossible duty, and lead to the prosecution of ignorant

offenders, and, it may be, to illegal gain in some places to the police and subordinate excise-officers.

"The Excise Commissioner has been watching the working of the new Law in England, and he felt himself justified in reporting that even in England the remedy was beset with serious difficulties, and that there was no reason to suppose that the evil existed in Bengal which it was the object of the Hon'ble Advocate-General's proposals to meet. I am referring especially so far to the matter of dealing with habitual drunkards. I think the Council knows in a general way that in England people who are termed habitual drunkards are put on a black list, and are cut off from the supply of liquor. Now the Hon'ble Advocate-General's proposals would go so far as to make a licensed vendor liable to punishment for the supply of liquor to habitual drunkards who may require liquor from them, although these licensed vendors may not be in a position to know the character of the particular person applying to be served with liquor. In fact, the whole object of this proposal of the Hon'ble Advocate-General is to throw upon the licensed vendor the impossible duty of knowing the characters and careers of his customers, and it would also doubtless lead to great oppression on the part of the police and subordinate excise-officers were such power incorporated in the law. The Board in dealing with the question accepted the principle that the proposals of the Hon'ble Advocate-General must commend themselves to all persons interested in the sale of intoxicants, but they were at a loss to deal with the subject further owing to the vagueness of the proposals. The Hon'ble Advocate-General's proposals contained a counsel of perfection, and it was impossible on the information then before the Board to know exactly what he meant, or what he proposed to do, and it was obviously very difficult to forecast all the subsidiary measures which would be required to give effect to them. The matter was reported to Government, who came to the conclusion that no necessity for legislation had been shown, and there the matter rests.

"On the other hand, I may say that in the present Bill it will be quite possible to introduce conditions into the licenses to be granted to licensed vendors which will go a long way to prevent their supplying liquor to such classes as habitual drunkards or any others that may be proscribed in the Act.

"Under clause 42 of the Bill it is proposed to give power to the Board to make rules prescribing the form of any license or permit to be granted under the Act and the conditions and particulars which may be inserted therein. And later on in the same section it is stated that conditions may be laid down, one of them being a condition as to the kind of person or classes of persons to whom a licensee may or may not sell exciseable articles. Under this clause and sub-clause it is considered that it will be quite possible to do what is sufficient and practicable to meet the proposals of the Hon'ble Advocate-General.

"With regard to children it will also be possible to lay down similar conditions. Perhaps the Council are not aware that now, in an outstill license, there is a provision which prohibits the sale of liquor to children under twelve years, and when this Bill has been passed into law, it will be perfectly easy to introduce similar conditions into all licenses preventing the supply of exciseable articles to children under twelve years, as well as to habitual drunkards.

"I think, Sir, I have at sufficient length taken up the time of this Council in stating the main points of the Bill before them. I have now to ask for leave to make the motion which stands in my name."

The HON'BLE MR. ELWORTHY said:—"I have read this Bill as carefully as time would permit, and I found very little in it to which the Association, which I represent, could take exception. On the other hand, there is much that gives satisfaction.

"The clauses dealing with the bottling of wines and spirits for sale, without a license, are highly satisfactory. The restriction to prevent the bottling of patent spirits, and the indiscriminate bottling of other spirits to represent the genuine article, is badly needed. This counterfeit has been carried on for many years, and it is to be hoped that, armed with law to help them, the excise-officers will be able to stop the practice. Clause 38 of Chapter VI is the principal clause of a Bill brought in this year, and passed a few months ago.

There was some amount of agitation and feeling in this city over that Bill, and, although some of us were adverse at the time to undertaking class legislation of too domestic a nature, generally unpopular and frequently unwise, we were of opinion that there were evils in the city beyond those against which the legislation was specially directed. The Council are now called on to confirm their action in passing this Bill. The operation of the law then passed has since been in the hands of the Board of Revenue and the Commissioner of Police. Before we proceed with these clauses in Select Committee, it would be advisable to know what the effect of this Act has been, how far the evil has been overcome, and how many houses have been closed. The Hon'ble Member in charge of this Bill might, perhaps, be able to help us in getting this information from the Police.

"Chapter V deals with the farm of fees. I observe that this system exists, and it has, I believe, been in existence for years. It will be interesting to know if that principle acts beneficially or otherwise, or whether, on the other hand, the time has arrived for change in the system of departmental collection by means of excise-officers.

"The powers of the Board of Revenue are apparently rather despotic. It is presumed that some appeal is permissible in case the public is not satisfied with decisions and orders, especially in private cases.

"In Chapter III, under the heading of 'Sale and Possession,' I note that clause 13 deals with licenses, and that clause 13 (2) (a) refers to private consumption. On this I wish to say a few words. Clause 13 (2) (a) permits the sale of a person's effects when leaving a station or after decease, and it is a piece of special legislation. There is another form of sale to which I wish to draw the attention of the Council: the sale of exciseable articles by clubs for consumption by members off the club's premises. This is a subject of complaint from firms carrying on business in this country, who are expected to pay for their licenses and to pay the taxes of this country's government. Many of the clubs in India are very slightly removed from ordinary trading establishments, selling their stores for profit. To this no one has any very grave objection. It should not, however, be permitted without a license. If clubs sell exciseable articles for profit, they should be subject to the same rules as trading firms; and they should be compelled to take out a license, and, like other trading establishments, contribute to the expenses of the Government. Clause 94 gives the Magistrate the power to compound. The clause is a new one. We should be glad to hear from the Hon'ble Member in charge of the Bill his reasons showing why this system of compounding is allowable."

The Hon'ble BABU BHUPENDRA NATH BASU said:—"I welcome the introduction of this measure in Your Honour's Council and under Your Honour's auspices. Since the Act of 1878 a great many years have passed, and public opinion in Europe and America has been considerably exercised over this Excise question. The time has come when reforms should be introduced into the Excise system of this Province, and we are glad that an opportunity has been offered to us of placing before Your Honour's Council the suggestions of the public with regard to how the Excise-revenue ought to be realised and the system administered. It has been said that local option will be a remedy for the increase of drunkenness which has certainly taken place, whether this increase be due to the introduction of Western culture or to large bodies of men being removed from village life and being brought together in one place. Apart from the restrictions which village life imposed upon them, it is an undisputed fact that amongst the lowest classes, and especially the labouring classes, there has been a great increase of drunkenness more in town and cities than in villages. If we had local option, a great step would be taken towards the mitigation of this evil. I may instance a very recent case in which a grog-shop has been allowed to be started in this city in Cornwallis Street in the neighbourhood of Grey Street, and around this grog-shop had grown up houses of bad repute on the principal thoroughfare for school-going boys in the Indian part of the town. The thanks of the entire community are due to Mr. Bignell, the present Commissioner of Police, who has earned our gratitude by removing those houses from that locality and clearing the street from

this danger. Though I regret to say that the popular element in the Corporation of Calcutta has been removed, yet under the guidance of the Hon'ble Mr. Greer, its present Chairman, I have no doubt that if a system of local option was allowed, grog-shops would not be allowed to grow up everywhere.

"We have also heard of the Gottenberg system which prevails on the Continent under which licenses are not granted to private individuals, but to Municipalities. The Municipality of Calcutta at one time urged upon the Government of this country for a contribution towards its revenue by giving them a part of the revenue derivable from excise in Calcutta. That was refused. But if Municipalities like that of Calcutta and other manufacturing towns were authorized and permitted to take in hand the sale of liquor, I have no doubt that, apart from the benefit which it would confer upon the public, it would materially benefit the revenue of these Municipalities, and my Hon'ble friend, Mr. Greer, would be saved many an uncomfortable hour.

"There is another provision which I think ought to find a place in this legislation, and that is the sale of exciseable goods to young children. Most of the Members of this Council are aware that the habit of cigarette-smoking and cocaine-drinking is increasing enormously among the juvenile public of this city and other large cities in India. The law, as it stands at present, has been unable to deal with these cases, and we see cocaine sold in betel shops and similar other places to the great injury of the young people who use them. In passing along the streets of Calcutta we see large numbers of young children smoking cigarettes. Their parents and guardians have felt themselves powerless to deal with this evil. I will not detain this Council by suggesting any means or remedies at this stage. I hope the Bill will receive very careful consideration in the Select Committee, and that the public bodies and Associations will be invited to offer their opinions on the Bill and the Bill will be so framed as to meet the exigencies of the case, without depriving the Government of its legitimate revenue, while at the same time checking, as far as possible, the increase in drunkenness and other evil habits."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"If not out of order and if permitted I will say a word in regard to the Bill which the Hon'ble Member in charge of it seeks to introduce. The Bill, copies of which have been circulated to Members of the Council, is a very important one from various points of view, and especially because the Government obtains a very large revenue from the Excise Department, and should therefore be kept up in a suitable manner.

"During the last sessions of the Council, the Excise Act came before it for its consideration in a very limited scope. The special modification then in contemplation was an urgent one. I had then proposed an amendment in regard to section 67 of the Act; but I was too late, and I was then told that almost the whole Act would shortly come before the Council for consideration and necessary amendments when I will have full opportunity to come with my own humble suggestions.

"I sincerely thank Your Honour's Government for permitting and the Hon'ble Member in charge for his motion to introduce the Bill.

"I need hardly say that as put forward by my learned and hon'ble friend, Babu Bhupendra Nath Basu, that drunkenness has increased to a very great extent, especially amongst the poor low classes of people which has led to ruination of many of them. There was a grog-shop in my village Gordi. The people of the village indulged in drunkenness to an extent which compelled me to apply to the then Collector of Monghyr, Mr. C. R. Marriott, who kindly removed it to a place called Pando, two miles away from Gordi.

"I am glad the Council will now have ample opportunity to deal with the details. I will also join with my learned hon'ble friend, Babu Bhupendra Nath, in pointing out the importance of the necessity of inviting public opinion in regard to this Bill before it becomes law."

The Hon'ble BABU SALIGRAM SINGH said:—"I trust that the opinion of the public bodies will be invited on this measure. I think they ought to be

consulted, but I do not wish to take up the time of the Council by repeating what previous speakers have said on this point."

The Hon'ble Mr. SHIRRES said:—"I wish to make just one or two observations with regard to the remarks which have fallen from the previous speakers. The Hon'ble Babu Bhupendra Nath Basu suggested that if the administration of Excise were made over to Municipalities, and they were allowed to get part of the revenue, it would to a great benefit to them. Of course, this is a very obvious proposition, and it is scarcely necessary to point out that if the Provincial Government gives up its revenue from Excise to Municipalities, it would have to propose additional taxation elsewhere."

The Hon'ble BABU BHUPENDRA NATH BASU said:—"That was not my meaning. My meaning was that instead of the sale being open to the public, to private individuals, it might be entrusted to the Municipalities."

The Hon'ble Mr. SHIRRES said:—"I understood you to say that the Government should give up a part of its revenue from Excise to Municipalities, and that if we did so, the Hon'ble Mr. Greer would be saved many an anxious hour."

The Hon'ble the PRESIDENT said:—"The meaning of the Hon'ble Member was, I think, that the profits derived by private individuals should be derived by the Municipalities."

The Hon'ble Mr. SHIRRES continued:—"I beg your pardon. I did not understand that. With regard to what has been said by the Hon'ble Mr. Elworthy as to the sale of liquors by mufassal clubs, I am inclined to think that there is a good deal of exaggeration in that. I have been in a good many districts, and in most of them there is no such thing as the selling of liquor in this way. My experience has been that as soon as a liquor shop starts or a refreshment-room is opened, the club ceases to sell every article except what is not procurable locally. The only exception is Darjeeling. I know of no other. They are not supposed to sell for profit; there is no information before us that they do sell for profit, and that they are in the same position as traders."

The Hon'ble the PRESIDENT said:—"I should like to make one or two observations with regard to the proposal of the Hon'ble Advocate-General and my promise to him at the last meeting of the Council. Before going on to say what I have to say in regard to that matter, which has been brought before us again to-day, I should like to make just one or two remarks. One is that undoubtedly we should do all that we can to get the advice and criticism of public bodies in regard to this Bill while it is still before the Select Committee, and before it has passed this Council. I hope that Hon'ble Members will realise that it is as much their duty as it is the duty of the Council as a whole to bring the matter before public bodies and elicit their opinion upon the subject. I have before my mind now a very valuable illustration of what may be done in this way. The remarks which we have heard from the Hon'ble Mr. Elworthy are the result of a very careful consultation with the body which he represents in this Council. Now this is an example which it would be well for us to follow. Where we represent, or where we have influence, let us do our best to secure the expression of public opinion before this Bill is passed."

"The only other matter which requires notice is the one I referred to when I rose. The other matters which have been brought before the Council by several Hon'ble Members are matters of detail, which will be discussed in the Select Committee, and I have no doubt that they will be fully threshed out there."

"But in regard to this matter of bringing the law of England into effect here in India in respect of habitual drunkards and in respect of children, I have one or two remarks to make. I promised the Hon'ble Mr. Woodroffe that

I would consider the matter very carefully between last Saturday and now. I have done so. I have examined the papers carefully, and though I regret I have not been able to write out a formal statement of the conclusion that I have arrived at, yet I am able to lay before the Council the result of that examination.

"First of all, I desire to express my thorough agreement with what has already been said by an Hon'ble Member of Council to-day, that it is no argument whatever for the introduction of a measure in this country, that has been introduced in England, and that we must suit our legislation to the circumstances of the country itself.

"There is another observation of the same Hon'ble Member which I do emphatically endorse, and that is that there is danger in increased police interference, and that until a strong case has been made out for police interference, this ought not to be resorted to. I do not think that we ought lightly to throw any such burden on the police or expose the people to possible exactions which undoubtedly this involves, especially in the interior.

"Now the first question which arises is, whether it is necessary to have this measure in India? I am very greatly in doubt on this point. I have examined the papers, and I find that the most experienced officers of Government have declared that in their opinion no case has been made out for such legislation in this country yet; and I find that my predecessor, Mr. Bourdillon, was of the same opinion, and on that account omitted this provision from the Bill. It would be absurd that I should have, in the short acquaintance that I have had with this Province, professed to have information which would justify me in setting aside the opinion of my predecessor and of the ablest advisers of Government and by my predecessor in office. and to say that, as at present advised, I do not see the necessity for the legislation which has been proposed.

"Suppose, however, that this necessity existed, is this particular form of action that which ought to be adopted to meet that necessity? On that point I have only two remarks to make. In the first place, it is an experiment even in England. While, as I have said, we are not bound to introduce any measure even if it succeeded in England, it would certainly be unwise to turn to England for example and bring from England a piece of legislation which is still even there only in an experimental state. We do not know whether the measure is succeeding or going to succeed in England.

"In the next place, if it did succeed in England, is it suitable to this country? As I have said before, I regard it as a very grave matter to legislate for any further interference on the part of the police, and I am not prepared to say that this particular mode of action in respect of the alleged evil would not be perhaps a more serious evil than the evil itself; whether we should not find that the cure was worse than the disease.

"I have also two other points which I think I ought to lay before the Council. One is that this Council could not undertake legislation in this direction without reference to the Government of India; and I am bound to say that I am not prepared at the present moment to make that reference on the grounds that I have already stated. The sanction of the Government of India would be necessary for including in the present legislation any provision of the kind.

"I should also like to point out, as has already been indicated by the Hon'ble Mr. Buckland, that we have a provision in this Bill which will enable us to deal with this matter. In the present Bill we have, under clause 42, sub-clause (a), power to make rules prescribing the form of any license and the conditions and particulars which may be inserted in it. And we have in clause (iv) power to make rules prescribing the insertion in any license granted under this Act conditions relating to the persons or classes of persons to whom a licensee may or may not sell excisable articles. We are therefore able in our licenses to deal with abuses as we find them arise.

"I desire therefore in conclusion to express my hearty sympathy with the views expressed by the Hon'ble Mr. Woodroffe last Saturday and by Hon'ble Members to-day with regard to the desirability of meeting any evil that may exist in this direction; and I promise on behalf of the Executive Government that we shall keep our eye on this matter and our attention fixed upon it; and

as any evil arises and we are satisfied on the point, we will do all that we can under the existing provisions of the Act to meet it.

"I trust that this explanation will be satisfactory to the Council."

The Motion was then put and agreed to, and the Bill was read accordingly. The Hon'ble Mr. BUCKLAND then applied to the President to suspend the Rules of Business for the purpose of referring the Bill to a Select Committee.

The Hon'ble the PRESIDENT having declared the Rules suspended,

The Hon'ble Mr. BUCKLAND said:—"Before, Sir, I speak on this motion, I would ask leave to allude for one moment to a matter which you referred to in your speech just now. I allude to the intimation that Your Honour gave that all Public Bodies and Associations will be invited to send in their opinions upon this Bill. I will only take this opportunity of saying that these opinions should be sent in without any loss of time. The Select Committee ought to begin their sittings before long, and it will be unreasonable to ask the Select Committee to wait for an indefinite time for suggestions and proposals to be laid before them. I therefore venture to express the hope that any suggestions or representations upon the Bill which will now be published may be sent in without any unnecessary delay."

The Hon'ble Mr. Buckland moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Mr. Math, the Hon'ble Mr. Gupta, the Hon'ble Mr. Shirres, the Hon'ble Mr. F., Maulvi Seraj-ul-Islam, Khan Bahadur, the Hon'ble Babu Bhupendra Nath Basu, and the Mover.

The Motion was put and agreed to.

THE BENGAL TRAMWAYS (AMENDMENT) BILL 1903.

The Hon'ble Mr. SHIRRES introduced the Bill to amend the Bengal Tramways Act, 1883, and moved that it be read in Council.

The Motion was put and agreed to, and the Bill was read accordingly.

The Council was adjourned to Saturday, the 9th January, 1904.

CALCUTTA;

F. G. WIGLEY,

The 29th December, 1903.

Secretary to the Bengal Council and

Assistant Secretary to the Govt. of Bengal,
Legislative Department.

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